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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN: 3206–AI81

Locality-Based Comparability Payments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to clarify and redefine the limitations on locality rates of pay for categories of non-General Schedule employees approved by the President's Pay Agent to receive locality-based comparability payments. This change was prompted by an Executive order that delegated the President's authority to establish such limitations to the President's Pay Agent. The final regulations will ensure that all employees receiving locality payments are treated consistently.

EFFECTIVE DATE: This regulation is effective on December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Jeanne Jacobson, (202) 606–2858, FAX: (202) 606–0824, or e-mail: *payleave@opm.gov.*

SUPPLEMENTARY INFORMATION: On March 24, 2000, the Office of Personnel Management (OPM) published a proposed rule (65 FR 15875) to revise the locality pay regulations in subpart F of part 531 of title 5, Code of Federal Regulations. This proposed rule clarified and redefined the limitations on locality rates of pay for categories of non-General Schedule employees approved by the President's Pay Agent to receive locality payments. The proposed rule had a 60-day public comment period, during which OPM did not receive any formal comments. Therefore, we are adopting the proposed rule as final without change.

Background

Locality-based comparability payments are authorized under 5 U.S.C. 5304. By law, locality payments automatically apply to General Schedule (GS) employees. The maximum rate of basic pay (excluding locality payments) for GS employees is the rate for GS–15, step 10, subject to a cap linked to the rate of pay for level V of the Executive Schedule. (See 5 U.S.C. 5303(f).) GS rates of basic pay adjusted by locality payments are capped at the rate of pay for level IV of the Executive Schedule. (See 5 U.S.C. 5304(g)(1).)

The locality pay law provides that the President may extend locality payments to various groups outside the GS pay system, such as members of the Senior Executive Service (SES), administrative law judges (ALJs), and other groups for which basic pay is limited to no more than the rate of pay for level IV of the Executive Schedule. (See 5 U.S.C. 5304(h).) Executive Order 12883 of November 29, 1993, provided that the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) may act for the President in exercising the authority to extend locality payments to such non-GS groups.

Section 5304(g)(2)(A) of title 5, United States Code, provides that locality rates approved for certain categories of non-GS employees specified in 5 U.S.C. 5304(h)(1)(A)–(E), including members of the SES and ALJs, are capped at the rate for level III of the Executive Schedule. Section 5304(g)(2)(B) of title 5, United States Code, provides that a level III locality pay cap applies to ''any positions under subsection (h)(1)(F) which the President may determine.'' Subsection (h)(1)(F) is a catch-all category of non-GS positions to which locality pay may be extended. This catch-all category includes Executive agency positions not otherwise listed in the law whose rates of basic pay are limited to not more than the rate for level IV of the Executive Schedule. Section 8 of Executive Order 13106 of December 7, 1998, delegated the President's authority under section 5304(g)(2)(B) of title 5, United States Code, to determine such limitations for categories of positions covered by 5 U.S.C. 5304(h)(1)(F) to the President's Pay Agent.

Final Regulations

These final regulations amend 5 CFR 531.604 by revising paragraph (c) to clarify that a locality rate of pay may not exceed the rate for level III of the Executive Schedule for categories of positions specified in 5 U.S.C. 5304(h)(1)(A)–(E). This includes senior-level, SES, Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) SES, administrative law judge, and contract appeals board positions. This final rule does not change the locality pay cap applicable to members of the SES and other categories of positions specified in 5 U.S.C. 5304(h)(1)(A)–(E). The final rule merely clarifies the level III locality pay cap prescribed in law at 5 U.S.C. 5304(g)(2)(A).

The final rule also amends § 531.604 by revising paragraph (c) to provide that, for categories of non-GS employees under 5 U.S.C. 5304(h)(1)(F) (i.e., the catch-all category of positions previously described), locality rates of pay may not exceed:

(1) The rate for level IV of the Executive Schedule, if the maximum scheduled annual rate of pay for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS–15, or

(2) The rate for level III of the Executive Schedule, if the maximum scheduled annual rate of pay for such positions exceeds the maximum payable scheduled annual rate of pay for GS–15, but is not more than the rate for level IV of the Executive Schedule.

The final regulations include pay protection for any employee who otherwise would suffer a reduction in his or her locality rate of pay under the locality pay cap provisions. It is possible that the locality pay cap for a group of non-GS employees under 5 U.S.C. 5304(h)(1)(F) could be reduced from level III to level IV of the Executive Schedule as GS rates of basic pay increase. This could occur if the rate of basic pay for GS–15, step 10, becomes equal to or exceeds the maximum scheduled annual rate of pay for a non-GS group. To prevent reductions in pay that would otherwise occur, § 531.606(c)(3) of the final regulations limit an affected employee's locality pay cap to the higher of (1) his or her locality rate on the day before the scheduled annual rate of pay for GS–15, step 10, becomes equal to or exceeds the

maximum scheduled annual rate of pay for the group of non-GS employees or (2) the rate for level IV of the Executive Schedule. This means that the employee's locality rate would be frozen until it is exceeded by the rate for level IV of the Executive Schedule.

The final regulations add a new paragraph (d) to § 531.604 to exclude experts and consultants appointed under 5 U.S.C. 3109 from the locality pay limitations. Unless otherwise authorized by law, the aggregate pay (including basic pay, locality pay, and premium pay) for experts and consultants appointed under 5 U.S.C. 3109 may not exceed the daily rate for GS–15, step 10 (excluding locality pay or any other additional pay). (See 5 CFR 304.105.)

The final regulations also clarify the definition of *employee* in § 531.602 to include positions in the FBI and DEA SES under 5 U.S.C. 5304(h)(1)(C) and other non-GS employee categories under 5 U.S.C. 5304(h)(1)(F) for which the President's Pay Agent has authorized locality payments. The regulations also amend paragraph (4) in the definition of *scheduled annual rate of pay* in § 531.602 to include the rates of basic pay for employees in the FBI and DEA SES and other categories of non-GS positions for which the Pay Agent has authorized locality pay. The proposed regulations clarify that the scheduled annual rate of pay for such employees must exclude any locality-based pay adjustments, special basic pay adjustments analogous to special salary rates established under 5 U.S.C. 5305, or other additional pay of any kind.

The President's Pay Agent has reviewed and approved this final rule.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make these regulations effective in less than 30 days. These regulations must be made effective prior to January 1, 2002. If they become effective after the January 2002 statutory pay adjustments, agencies may be forced in some scenarios to use the pay protection provision to freeze the pay of a few employees whose pay was capped at level III of the Executive Schedule.

Execute Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending part 531 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of FEPCA, Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

2. In § 531.602, paragraph (2) of the definition of *employee* and paragraph (4) of the definition of *scheduled annual rate of pay* are revised to read as follows:

§ 531.602 Definitions

* * * * *

Employee means—* * *

(2) An employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(F) for which the President (or designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2) and whose official duty station is located in a locality pay area.

* * * * *

Scheduled annual rate of pay means—* * *

(4) For an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(F) for which the President (or designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2), the rate of basic pay fixed by law or administrative action, exclusive of any locality-based adjustments (including adjustments equivalent to local special rate adjustments under 5 U.S.C. 5305) or other additional pay of any kind.

3. In § 531.604, paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 531.604 Determining locality rates of pay.

* * * * *

(c)(1) Locality rates of pay approved by the President (or designee) for employees in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(E) may not exceed the rate for level III of the Executive Schedule.

(2) Locality rates of pay approved by the President (or designee) for employees in a category of positions described in 5 U.S.C. 5304(h)(1)(F) may not exceed—

(i) The rate for level IV of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS–15; or

(ii) The rate for level III of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions exceeds the maximum payable scheduled annual rate of pay for GS–15, but is not more than the rate for level IV of the Executive Schedule.

(3) If application of paragraph (c)(2) of this section would otherwise reduce an employee's existing locality rate of pay, the employee's locality rate of pay will be capped at the higher of—

(i) The amount of his or her locality rate of pay on the day before paragraph (c)(2) of this section is applied, or

(ii) The rate for level IV of the Executive Schedule.

(d) Paragraph (c) of this section does not apply to experts and consultants appointed under 5 U.S.C. 3109 if the pay for those experts and consultants is limited to the highest rate payable under 5 U.S.C. 5332 (i.e., the unadjusted maximum GS–15 rate). Pay limitations for such experts and consultants must be determined in accordance with § 304.105 of this chapter.

[FR Doc. 01–31901 Filed 12–27–01; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 99–081–2]

Hot Water Treatment for Limes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On November 8, 2001, the Animal and Plant Health Inspection Service published a direct final rule. (See 66 FR 56427–56428, Docket No. 99–081–1.) The direct final rule notified the public of our intention to amend the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the regulations, to allow limes that are found to be infested with mealybugs (Pseudococcidae) and other surface pests to be treated with a hot water treatment. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 20th day of December 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–31945 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–01–02]

Pork Promotion, Research, and Consumer Information Order—Increase in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this final rule increases by seven-hundredths to one-tenth of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 2000 average price for domestic barrows and gilts. This final action brings the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

EFFECTIVE DATE: January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988 and Regulatory Flexibility Act

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Department of Agriculture (USDA) stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review USDA's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 500 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.201).

This final rule will increase the amount of assessments on imported pork and pork products subject to assessment by seven-hundredths to one-tenth of a cent per pound, or as expressed in cents per kilogram, fifteen-hundredths to twenty-two-hundredths of a cent per kilogram. This increase is consistent with the increase in the annual average price of domestic barrows and gilts for calendar year 2000. The average annual market price increased from $31.46 in 1999 to $42.70 in 2000, an increase of about 36 percent. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of $713,000 over a 12-month period. Assessments collected on imported hogs, pork, and pork products for 2000 were $3,384,096. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, 62 FR 26205, 63 FR 45936, and 64 FR

44643) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork products were produced. This final rule will increase the assessments on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule August 17, 1999, and effective on September 16, 1999 (64 FR 44643). This increase is consistent with the increase in the annual average price of domestic barrows and gilts for calendar year 2000 as calculated by USDA's, AMS, Livestock and Grain Market News (LGMN) Branch. This increase in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This final rule will not change the current assessment rate of 0.45 percent of the market value.

The methodology for determining the per pound amount of assessments for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors that are published in USDA's Agricultural Handbook No. 697 ''Conversion Factors and Weights and Measures.'' These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as calculated by LGMN Branch. Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cents per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

Since 1999 when the last adjustment was made in the amount of the assessment due on live hogs and imported pork and pork products (64 FR 44643), there has been a change in the way LGMN Branch reports hog prices. For calendar year 1998, the annual average price for barrows and gilts was based on the average price for barrows and gilts at five terminal markets. LGMN Branch no longer reports the average price at terminal markets. When the Order was published on September 5, 1986, LGMN Branch reported an annual average price of barrows and gilts based on the seven major markets (East St. Louis, Illinois; Omaha, Nebraska; Peoria, Illinois; St. Joseph, Missouri; South St. Paul, Minnesota; Sioux City, Iowa; and Sioux Falls, South Dakota) and that price was used to calculate the equivalent live animal value of imported pork and pork products. In 1991, one of the seven markets, Peoria, Illinois, closed and LGMN Branch changed its report to include the annual average price from only six markets. Again in 1994, another market, East St. Louis, Illinois, closed and LGMN began reporting the annual average price for barrows and gilts based on five markets. In December 1998, two more of the original seven markets, Sioux City, Iowa, and Omaha, Nebraska, closed and LGMN Branch discontinued reporting market prices based on the three remaining markets because these markets did not have a sufficient volume of sales to accurately reflect a national average price for barrows and gilts.

In 1999, LGMN Branch replaced the five-market report with the Iowa-Southern Minnesota hog report as the source for the national average price for barrows and gilts. This average price, comparable to the former five-market annual average price, was quoted for 49–52 percent lean yield barrows and gilts weighing an average of 240–280 pounds live weight. LGMN Branch reported these prices daily as well as publishing a monthly average price in the ''Livestock, Meat and Wool Weekly Summary and Statistics.'' While LGMN Branch discontinued publishing an annual average price of barrows and gilts in the ''Livestock, Meat and Wool Weekly Summary and Statistics,'' they had calculated the annual average price for barrows and gilts based on the 12 monthly average prices in the Iowa-Southern Minnesota hog reports. This annual average price was used in the calculations for determining the per pound amount of assessments for imported pork and pork products. Further changes are anticipated in the future due to implementation of the Livestock Mandatory Price Reporting program (65 FR 75464) on April 2, 2001.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The last time the cents per pound assessments for imported pork and pork products listed in the table in § 1230.110(b) were adjusted was for calendar year 1998 (64 FR 44643). The equivalent live animal value of imported pork and pork products was recalculated for calendar year 1999 and when compared to the equivalent live animal value for calendar year 1998, no adjustments in the cents per pound assessments were necessary for imported pork and pork products subject to assessment under the Act and Order. In 1999 the average annual price for barrows and gilts was $31.46 per hundredweight as determined by LGMN Branch based on monthly average prices for barrows and gilts published in the ''Livestock, Meat and Wool Weekly Summary and Statistics.'' The 1998 average price for barrows and gilts was $31.82 per hundredweight. The cents per pound assessments for calendar year 1999 remained the same as calendar year 1998.

The average annual market price increased from $31.46 per hundredweight in 1999 to $42.70 per hundredweight in 2000, an increase of about 36 percent. This increase will result in a corresponding increase in assessments for all Harmonized Tariff Schedule (HTS) numbers listed in the table in § 1230.110(b), 64 FR 44643; August 17, 1999, of an amount equal to seven-hundredths to one-tenth of a cent per pound, or as expressed in cents per kilogram, fifteen-hundredths to twenty-two hundredths of a cent per kilogram. Based on the Department of Commerce's, Bureau of Census, data on the volume of pork and pork products imported during 2000, the increase in assessment amounts will result in an estimated $713,000 increase in assessments over a 12-month period. The assessment rate for imported live hogs is not affected by the change in the

cents per pound assessment rate for imported pork and pork products.

On August 13, 2001, AMS published in the **Federal Register** (66 FR 42469) a proposed rule which would increase the per pound assessment on imported pork and pork products consistent with the increase in the 2000 average price of domestic barrows and gilts to provide comparability between imported and domestic assessments. The proposal was published with a request for comments by September 12, 2001. No comments were received.

Accordingly, this final rule establishes the new per-pound and per-kilogram assessments on imported pork and pork products.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Section 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	0.45 percent Customs Entered Value.
0103.91.0000	0.45 percent Customs Entered Value.
0103.92.0000	0.45 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and Pork Products	Assessment	
	cents/lb	cents/kg
0203.11.0000	.27	.595242
0203.12.1010	.27	.595242
0203.12.1020	.27	.595242
0203.12.9010	.27	.595242
0203.12.9020	.27	.595242
0203.19.2010	.32	.705472
0203.19.2090	.32	.705472
0203.19.4010	.27	.595242
0203.19.4090	.27	.595242
0203.21.0000	.27	.595242
0203.22.1000	.27	.595242
0203.22.9000	.27	.595242
0203.29.2000	.32	.705472
0203.29.4000	.27	.595242
0206.30.0000	.27	.595242
0206.41.0000	.27	.595242
0206.49.0000	.27	.595242
0210.11.0010	.27	.595242
0210.11.0020	.27	.595242
0210.12.0020	.27	.595242
0210.12.0040	.27	.595242
0210.19.0010	.32	.705472
0210.19.0090	.32	.705472
1601.00.2010	.38	.837748
1601.00.2090	.38	.837748
1602.41.2020	.41	.903886
1602.41.2040	.41	.903886
1602.41.9000	.27	.595242
1602.42.2020	.41	.903886
1602.42.2040	.41	.903886
1602.42.4000	.27	.595242
1602.49.2000	.38	.837748
1602.49.4000	.32	.705472

Dated: December 21, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–32003 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG83

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of December 31, 2001, for the direct final rule that appeared in the **Federal Register** of October 16, 2001 (66 FR 52486). This direct final rule amended the NRC's regulations by revising the NAC–UMS Universal Storage System listing within the list of approved spent fuel storage casks to include Amendment No. 2 to Certificate of Compliance No. 1015. This document confirms the effective date.

DATES: The effective date of December 31, 2001, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219 (e-mail: *jmm2@nrc.gov).*

SUPPLEMENTARY INFORMATION: On October 16, 2001 (66 FR 52486), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR part 72 by revising the NAC–UMS Universal Storage System listing within the list of approved spent fuel storage casks to include Amendment No. 2 to Certificate of Compliance No. 1015. Amendment No. 2 modifies the present cask system design to add miscellaneous spent fuel related components to the approved contents list for the NAC–UMS Universal Storage System and change the required actions in response to a failure of the cask heat removal system. Several other minor administrative changes were made and are discussed in Section 12 of the Safety Evaluation Report. Also, specific changes to were made to Technical Specifications that permit the storage of these components and the other requested changes. Conditions 1b and 6 of the Certificate of Compliance were also changed. In the direct final rule, NRC stated that if no significant adverse comments were

received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 20th day of December 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01–31923 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1055]

Risk–Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital Treatment of Recourse, Direct Credit Substitutes and Residual Interests in Asset Securitizations

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Final rule; correction

SUMMARY: This document corrects the Federal Reserve's regulatory text of a final rule published in the **Federal Register** of November 29, 2001 (66 FR 59614), regarding the capital treatment of recourse, direct credit substitutes, and residual interests in asset securitizations. This correction rectifies errors made in Attachment II in Appendix A, part 208 and Appendix A, part 225.

DATES: This correction is effective January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Boemio, 202–452–2982 or Arleen Lustig, 202–452–2987.

SUPPLEMENTARY INFORMATION:

Correction:

In the final rule FR Doc. No. 01–29179, beginning on 66 FR 59614 in the issue of November 29, 2001, make the following corrections.

PART 208—[CORRECTED]

1. In Appendix A to Part 208, Attachment II, on page 59643:

A. In the column for Components, in the fourth entry under Supplementary Capital, replace the word ''stocks'' with the word ''stock.''

B. In the column for Minimum requirements, the fourth entry is revised to read, ''Banks should avoid using minority interests to introduce elements not otherwise qualifying for tier 1 capital.''

C. In the column for Minimum requirements, remove the eleventh entry beginning with ''As a general rule * * *'' in its entirety.

D. Remove footnote 3 following the table.

PART 225—[CORRECTED]

2. In Appendix A to Part 225, Attachment II, on page 59651:

A. In the column for Minimum requirements, the second entry is revised to read ''Organizations should avoid using minority interests to introduce elements not otherwise qualifying for tier 1 capital.''

B. In the column for Minimum requirements, in the eleventh entry of the table, replace the word ''banks'' with ''organizations.''

By order of the Board of Governors of the Federal Reserve System, December 20, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–31887 Filed 12–27–01; 8:45 am]

BILLING CODE 31887–22–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–40–AD; Amendment 39–12569; AD 2001–26–05]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Model 247F Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Hamilton Sundstrand model 247F propellers. This action requires a one-time rework of certain model 247F propellers by removing all four propeller blades from service, replacing those blades with serviceable propeller blades, and marking the propeller with a new part number. This amendment is prompted by nine reports of the blades partially slipping at the bond joint between the blade tulip and the composite blade airfoil interface. The actions specified in this AD are intended to prevent the loss of a propeller blade, which may result in loss of airplane control.

DATES: Effective January 14, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 14, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 26, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in this AD may be obtained from Hamilton Sundstrand, A United Technologies Company, Publications Manager, Mail Stop 2AM–EE50, One Hamilton Road, Windsor Locks, CT 06096. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA has received nine reports of blades partially slipping at the bond joint between the blade tulip and the composite blade airfoil interface on Hamilton Sundstrand model 247F propellers, part numbers (P/N's) 810610–1 and 815550–1. Investigation reveals that this partial slippage is due to debonding of that interface. This amendment requires, within 30 days of the effective date of this AD as a one-time action, reworking certain model 247F propellers by removing all four existing propeller blades P/N's R810640–1, R810640–2, and R810640–3 from service, replacing those blades with serviceable propeller blades, and marking the propeller with a new part number. To date, no blade has come free from the hub. This condition, if not corrected, could result in the loss of a propeller blade, which may result in loss of airplane control.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Hamilton Sundstrand Service Bulletin (SB) 247F–61–37, Revision 2, dated September 7, 2001 that describes procedures for propeller blade replacement and propeller marking.

Differences Between This AD and the Manufacturer's Service Information

Although Hamilton Sundstrand SB 247F–61–37, Revision 2, dated September 7, 2001 mandates the affected propeller blade population to be removed from service by December 31, 2001, this amendment requires propeller blade removal from service within 30 days of the effective date of this AD.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Hamilton Sundstrand model 247F propellers of the same type design, this AD requires, within 30 days of the effective date of this AD, as a one-time action, reworking certain model 247F propellers by removing all four existing propeller blades from service, replacing those blades with serviceable propeller blades, and marking the propeller with a new part number. The actions are required to be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–40–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–26–05 Hamilton Sundstrand Model 247F Propellers: Amendment 39–12569. Docket No. 2001–NE–40–AD.

Applicability: This airworthiness directive (AD) is applicable to Hamilton Sundstrand model 247F propellers. These propellers are installed on, but not limited to Aerospatiale ATR–72 and Xian MA–60 airplanes.

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required within 30 days of the effective date of this AD, unless already done.

To prevent the loss of a propeller blade, which may result in loss of airplane control, do the following:

(a) Do the following in accordance with paragraphs 3A. through 3C.(2), of the Accomplishment Instructions, of Hamilton Sundstrand Service Bulletin 247F–61–37, Revision 2, dated September 7, 2001.

(1) Remove from service propeller blades part numbers (P/N's) R810640–1, R810640–2, and R810640–3, within 30 days of the effective date of this AD, and replace with serviceable propeller blades.

(2) Mark propellers P/N 810610–1 as P/N 810610–2, and propellers P/N 815550–1 as P/N 815550–2.

(b) After the effective date of this AD, do not install any propeller blades P/N's R810640–1, R810640–2, and R810640–3 into any propeller, and do not install any propellers P/N's 810610–1 and 815550–1 onto any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(e) The propeller blade replacement and propeller marking must be done in accordance with Hamilton Sundstrand Service Bulletin 247F–61–37, Revision 2, dated September 7, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Sundstrand, A United Technologies Company, Publications Manager, Mail Stop 2AM–EE50, One Hamilton Road, Windsor Locks, CT 06096. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 14, 2002.

Issued in Burlington, Massachusetts, on December 14, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–31328 Filed 12–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 385

[Docket No. RM00–1–000; Order No. 622]

Electronic Filing of FERC Form No. 423

December 20, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA) to provide for the electronic filing of its Form No. 423 (Form 423). Commencing with the January 2002 filing, due March 15, 2002, only electronic filings will be accepted; the paper filing requirement will be eliminated. The Commission has developed the capacity to accept such filings electronically and has extensively tested the software and related elements of the electronic filing mechanism. This automation of the Form 423 yields significant benefits to respondents, the Commission and to the electric industry as a whole. These benefits include more timely analysis and publication of the data, increased data analysis capability, reduced cost of data entry and retrieval and an overall reduction in filing burden.

EFFECTIVE DATE: This final rule is effective January 28, 2002.

FOR FURTHER INFORMATION CONTACT:

Patricia W. Morris (Technical Information), Office of Markets, Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 208–6990, *patricia.morris@ferc.fed.us*

Bolton Pierce (Electronic System), Office of Information Technology, FERC, 888 First Street, NE., Washington, DC 20426, (202) 208–1803, *bolton.pierce@ferc.fed.us*

S.L. Higginbottom (Legal Information), Office of General Counsel, FERC, 888 First Street, NE., Washington, DC 20426, (202) 208–2168, *samuel.higginbottom@ferc.fed.us*

SUPPLEMENTARY INFORMATION:

Federal Energy Regulatory Commission

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

[Docket No. RM00–1–000]

Electronic Filing of FERC Form No. 423, Order No. 622; Final Rule

I. Introduction

This Final Rule revises parts 141 and 385 of the Commission's regulations to require the electronic filing of its FERC Form No. 423 ''Monthly Report of Cost and Quality of Fuels for Electric Plants'' (Form 423).[1] The electronic data to be filed, commencing with reports for the month of January 2002, due no later than March 19, 2002, will replace the nearly 1000 pages of Form 423 information presently filed with the Commission in hard copy every month. There will be no further requirement for a hard copy Form 423 filing. The Commission has throughly tested the software and related elements of the electronic filing mechanism and finds that the methodology and mechanics of the system are ready for industry-wide electronic filing of Form 423.

II. Background

Form 423 information is collected pursuant to sections 205 and 206 of the Federal Power Act (FPA), as amended by section 208 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission collects basic cost and quality of fuels data at electric generating plants on the Form 423 and has used such data to conduct fuel reviews, rate investigations and to track market changes and trends. The Commission's Form 423 filing requirements are found at 18 CFR 141.61

The Form 423 is a monthly submission from approximately 200 electric utilities who sell electric power under traditionally-regulated, cost-based rates from approximately 500 power plants.

III. Discussion

On October 28, 1999, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket RM00–1–000, proposing that the Form 423 be filed electronically.[2] Respondents to the NOPR commended the efforts of the Commission in reducing the burden by providing for electronic submissions of the Form 423. Any concerns voiced by respondents to the NOPR now have been addressed and resolved.

The Edison Electric Institute (EEI) was ''concerned that the hasty implementation of electronic filing may not provide all the expected benefits and may impose greater transition costs than are necessary.'' EEI, and also Southern Companies, thus encouraged the Commission to carefully test all software for a minimum of one year with a group of volunteer reporting companies before electronic filing was made compulsory, and to allow electronic filing via the Internet. The Commission has, in fact, done such testing. Testing began with just a few filers over a year ago. Gradually more and more filers were added and the Commission is now receiving over 25% of each month's Form 423 filings electronically; many of those filing are EEI members who volunteered to help develop the system. (Each month respondents update their previous month's data to reflect the current reporting month; only changes to the prior month's data need be made.) In an

[1] The Commission's original Notice of Proposed Rulemaking (NOPR), proposed to make three FERC data collections, Forms 423, 714 and 715, electronic. This Final Rule will require electronic filing of the Form 423, but not yet change the collection of the Forms 714 and 715. Comments received in response to the NOPR indicated that further consideration was warranted before electronic filing of the Forms 714 and 715 is ordered.

[2] Electronic Filing of FERC Form Nos. 423, 714 and 715, Notice of Proposed Rulemaking, 64 FR 60140 (Nov. 4, 1999), FERC Stats. & Regs. ¶ 32,546 (1999).

effort to assist each filer in entering and submitting the most accurate data, numerous checks and balances have been incorporated into the system. Moreover, filings are being transmitted to the Commission via the Internet.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[3] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended,[4] and also for information gathering, analysis, and dissemination.[5] This Final Rule does not substantially change the effect of the regulation being amended. In addition, the Final Rule involves information gathering, analysis and dissemination. Therefore, this Final Rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

In *Mid-Tex Elect. Coop.* v. *FERC,* 773 F. 2d 327 (D. C. Cir. 1985), the court found that Congress, in passing the Regulatory Flexibility Act (RFA),[6] intended agencies to limit their consideration ''to small entities that would be directly regulated'' by proposed rules. *Id.* at 342. The court further concluded that ''the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'' *Id.*

This Final Rule will reduce the reporting burden and promote consistent reporting practices for all reporting companies. The Commission received no comments regarding its certification in the NOPR that the Final Rule would not have a significant economic impact on a substantial number of small entities. Moreover, the Commission again finds that most filing entities regulated by the Commission do not fall within the RFA's definition of a small entity[7] and that this Final Rule will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (collections of information) imposed by an agency. The information collection requirements in this Final Rule are contained in Form 423, ''Monthly Report of Cost and Quality of Fuels for Electric Plants'' (OMB approval No. 1902–0024). Form 423 most recently received OMB approval on January 23, 2001 for the period through January 2003. As part of the renewal process, OMB was notified that the Commission was developing and testing a system for electronic submission of the data. This electronic filing initiative is part of the Commission's ongoing program to reduce reporting requirements. As explained below, the shift to electronic filing of the Form 423 will reduce, by about one-third, the burden on regulated companies for maintaining and reporting information under the Commission's Form 423 regulations.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, (202) 208–1415) or from the Office of Management and Budget, Room 10202 NEOB, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395–3087, fax: (202) 395–7285).

The regulated entity shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Title: FERC Form No. 423, ''Monthly Report of Cost and Quality of Fuels for Electric Plants.''

Action: Revision of a Currently Approved Collection.

OMB Control No.: 1902–0024.

Respondents: Every electric power producer having electric generating plants with a rated steam-electric generating capacity of 50 megawatts or greater during the reporting month.

Frequency of Responses: Monthly.

Reporting Burden: At the time of OMB renewal in January 2001, there were monthly filings for approximately 636 electric plants. With an average overall response rate of 1.5 hours per monthly report, the total respondent burden was 11,448 hours (636 x 1.5 x 12). Currently there are 584 monthly filings, a reduction of 52 filings due largely to waivers since granted by the Commission to those utilities operating solely under market-based rates, with a total annual respondent burden of 10,512 hours (584 x 1.5 x 12). These 584 monthly filings will now be submitted electronically, reducing the average burden to 1.0 hour per monthly report, for a total respondent burden of 7,008 hours (584 x 1.0 x 12). This is a reduction of 3,504 respondent burden hours (10,512 hours—7,008 hours), or a reduction of roughly one third.

The burden reduction realized by the Federal government is just as dramatic. Previously the estimated annualized Form 423 cost to the Federal government was stated as $190,000 (approximately 1.6 FTE), however with electronic filing the annual cost is only $29,260 (approximately 0.25 FTE).

The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. These new electronic filing requirements conform to the Commission's plan for efficient information collection, communication and management within the electric power industry. The changes will contribute to well-informed decision-making and streamlined workload processing.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 273–0873, e-mail: *mike.miller@ferc.fed.us.*

For the submission of comments concerning the collection of information and the associated burden estimates, please send your comments to the contact listed above or to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC, 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–3087, fax: (202) 395–7285).

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page *(http://www.ferc.gov)* and in FERC's Public Reference Room

[3] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[4] 18 CFR 380.4(a)(2)(ii).

[5] 18 CFR 380.4(a)(5).

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's home page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the web site during normal business hours from our Help line at (202) 208–2222 (e-mail to *WebMaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC web site are available. User assistance is also available.

VIII. Effective Date and Congressional Notification

This Final Rule will take effect January 28, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[8] The Commission will submit the Final Rule to both Houses of Congress and the General Accounting Office.[9]

[8] 5 U.S.C. 804(2).

[9] 5 U.S.C. 801(a)(1)(A).

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure. Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends parts 141 and 385, Chapter I, Title 18, of the Code of Federal Regulations, as follows:

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a-828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 141.61 is revised, to read as follows:

§ 141.61 FERC Form No. 423, Monthly report of cost and quality of fuels for electric plants.

(a) *Who must file.* Every electric power producer having electric generating plants with a stream-electric generating capacity of 50 megawatts or greater during the reporting month must file with the Federal Energy Regulatory Commission for each such plant the FERC Form No. 423, ''Monthly Report of Cost and Quality of Fuels for Electric Plants,'' pursuant to the General Instructions set out in this form.

(b) *When to file and what to file.* This report must be filed on or before the 45th day after the end of each reporting month. This report must be filed with the Federal Energy Regulatory Commission as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in this form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the report required to be submitted for the reporting month of January 2002.

PART 385—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

4. Section 385.2011 is amended by adding paragraph (a)(8), to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

(a) * * *

(8) FERC Form No. 423, Monthly Report of Cost and Quality of Fuels for Electric Plants.

* * * * *

[FR Doc. 01–32006 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 416 and 422

RIN 0960–AF31

Supplemental Security Income; Disclosure of Information to Consumer Reporting Agencies and Overpayment Recovery Through Administrative Offset Against Federal Payments

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are modifying our regulations dealing with the recovery of supplemental security income (SSI) overpayments made under title XVI of the Social Security Act (the Act). The modifications reflect statutory authority for the Social Security Administration (SSA) to selectively refer information about SSI overpayments to consumer reporting agencies and to recover SSI overpayments through administrative offset by the Department of the Treasury against other Federal payments to which the overpaid individual may be entitled. These collection practices would be limited to overpayments made to a person after he or she attained age 18 that are determined to be otherwise unrecoverable under section 1631(b) of the Act after the individual ceases to be a beneficiary under title XVI of the Act.

DATES: These regulations will be effective on January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Hora, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7183 or TTY (410) 966–5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet site, Social Security Online, at *http://www.ssa.gov/*.

SUPPLEMENTARY INFORMATION: Section 1631(b) of the Act prescribes the

methods SSA may use to recover SSI overpayments. Until enactment of Pub. L. 106–169 on December 14, 1999, SSA was not authorized to use certain tools found in 31 U.S.C. Chapter 37 to recover title XVI program overpayments. Section 203 of Pub. L. 106–169 amended section 1631(b) of the Act to permit SSA to use for SSI overpayments several of the debt collection practices that have been available for use regarding social security benefit overpayments under title II of the Act. Among other things, these practices include reporting delinquent debts to consumer reporting agencies and recovering debts by administrative offset against other Federal payments to which the overpaid person is entitled. Under section 1631(b) of the Act, these additional practices may be used only if the SSI overpayment was made to a person after he or she attained age 18 and the overpayment has been determined to be otherwise unrecoverable under section 1631(b) of the Act after the overpaid person is no longer entitled to benefits under title XVI of the Act.

Before we will refer information to consumer reporting agencies or refer an SSI overpayment to the Department of the Treasury for administrative offset, we will send the overpaid person a notice that explains the individual's statutory rights regarding the referral. Specifically, we will send the overpaid person written notice (or, in the case of an individual for whom we do not have a current address, take reasonable action to locate and send written notice) describing, among other things, the amount and nature of the overpayment, the action that we propose to take, and the overpaid person's rights to request us to review the debt and to inspect or copy our records about the overpayment. We will also explain in the notice that the overpaid person has at least 60 calendar days to present evidence that all or part of the overpayment is not past-due or not legally enforceable, or enter into a written agreement to pay the overpayment.

In these final rules, we set forth our policies on referral of information on title XVI overpayment debts to consumer reporting agencies and referral of such debts to the Department of the Treasury for administrative offset. In the future, as we make the necessary systems changes and develop policies and procedures to enable us to use additional debt collection tools for recovery of SSI overpayments, we will make further modifications to our overpayment recovery rules.

Explanation of Changes to Regulations

We are adding a new § 416.590 to our regulations to explain that we will use the additional tools authorized by section 1631(b) of the Act when the title XVI program overpayments occurred after the individual attained age 18, and the overpayment has been determined to be otherwise unrecoverable under section 1631(b) of the Act after the individual is no longer entitled to benefits under title XVI of the Act. Section 416.590 also contains the criteria under which we determine that an overpayment is otherwise unrecoverable under section 1631(b) of the Act. An overpayment will be determined to be unrecoverable when all of the following conditions are met:

- We completed our billing sequence (i.e., we have sent the overpaid person an initial notice of the overpayment, a reminder notice, and a past-due notice) or suspended or terminated collection activity in accordance with applicable rules, such as the Federal Claims Collection Standards in 31 CFR 903.2 or 903.3;
- There is no installment payment agreement, or the overpaid person has failed to pay in accordance with such an agreement for two consecutive months;
- We cannot collect the overpayment by adjusting benefits payable to individuals other than the overpaid person.

For purposes of § 416.590, if the overpaid person is a member of an eligible couple that is legally separated and/or living apart, we will deem unrecoverable from the overpaid person's spouse that part of the overpayment which the overpaid person's spouse did not receive. Adjustment of benefits will be waived for the overpaid person's spouse when that spouse is without fault (as defined in § 416.552) and waiver is requested under these circumstances. See § 416.554.

In these final rules, we made one change in new § 416.590(b)(1) from the version published in the Notice of Proposed Rulemaking of October 23, 2000 (65 FR 63221). We deleted the terms ''the Federal Claims Collection Standards in 4 CFR 104.2 or 104.3'' and inserted the terms ''applicable rules, such as the Federal Claims Collection Standards in 31 CFR 903.2 or 903.3.'' The change reflects the revision and relocation of the Federal Claims Collection Standards within the Code of Federal Regulations effective December 22, 2000. See 65 FR 70390–70406 (November 22, 2000). As revised, new § 416.590(b)(1) provides that we will find an SSI overpayment to be ''otherwise unrecoverable'' under section 1631(b) of the Act if, among other things, we completed our billing system sequence for the overpayment or we suspended or terminated our collection activity under the Federal Claims Collection Standards that applied at the time of the suspension or termination.

As set out in the proposed rules, we are adding to § 416.1403(a) (the list of administrative actions that are not initial determinations) new paragraphs (18) and (19) to include our determinations whether we will refer information about an overpayment to consumer reporting agencies and whether we will refer the overpayment to the Department of the Treasury for offset against other Federal payments due the overpaid person. Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart N of our regulations at 20 CFR part 416, and they are not subject to judicial review under section 1631(c)(3) of the Act.

We are also expanding our existing regulations in subpart D of part 422 to cover SSI overpayments. Specifically, we have revised § 422.301 to add language to specify that the debt collection tools in subpart D may be used to recover title XVI program overpayments the Commissioner has determined, through § 416.590, to be unrecoverable under section 1631(b) of the Act. In § 422.305, we have revised both the section title and paragraph (a). The changes we are making to §§ 422.301 and 422.305 will allow us to apply to overpayments under both title II and title XVI of the Act the rules in subpart D on the referral of information to consumer reporting agencies and collection through administrative offset by the Department of the Treasury.

In addition to the one change noted above, these final rules contain several non-substantive revisions to correct minor typographical errors and to make the regulations easier to read.

Public Comments

On October 23, 2000 we published a Notice of Proposed Rulemaking in the **Federal Register** at 65 FR 63221 and provided a 60-day period for interested individuals and organizations to comment on the proposed rules. We received comments from two organizations. A summary of the comments and our responses to them follow.

Comment: One organization recommended that we include language in the notice advising individuals of

their rights to request that we waive collection of the overpayment. This organization expressed concern that individuals likely to be affected by our new statutory authority to report information on SSI overpayments to consumer reporting agencies and collect such debts through administrative offset by the Department of the Treasury may not realize that they may request waiver at any time.

Response: We agree with the organization. Before we will report information on an SSI overpayment debt to consumer reporting agencies and to the Department of the Treasury for administrative offset, we will send the overpaid individual a notice in accordance with 31 U.S.C. 3711(e) and 3716(a), advising him or her of our plans to take those actions. See 20 CFR 422.305(b) and 422.310(c). In addition to the information required by those provisions, we will include language in the notice advising the individual of his or her right to request that we waive collection of the overpayment. We will inform the individual that if the individual requests waiver within 60 days following the date of the notice, we will not take the actions to report information on the overpayment debt to consumer reporting agencies or to Treasury while we review the matter. Under the usual waiver procedures, the individual has the opportunity for a prerecoupment personal conference before waiver of collection can be denied. If we then decide that waiver of collection is not appropriate, we will refer the overpayment information to consumer reporting agencies and the Department of the Treasury after we notify the individual of our decision on the waiver request. We do not need to change our regulations in order to adopt these practices.

Comment: One organization stated that SSA should not apply the additional debt collection activities in subpart D of part 422 while an appeal of the overpayment decision or waiver decision is pending at any level of appeal. The organization felt that the reviews done by the field offices (reconsideration and waiver) are cursory because of the lack of staff.

Response: When an individual submits a timely request for reconsideration of the initial overpayment decision and/or requests waiver of collection of the overpayment, we are precluded from taking any recovery action until we render a decision affirming the initial determination and/or (after the individual had the opportunity for a prerecoupment personal conference) denying the waiver request. See *Califano* v. *Yamasaki,* 442 U.S. 682 (1979). We are not required to refrain from taking collection action concerning a title XVI overpayment debt after a decision is issued on a request for reconsideration of the initial overpayment determination and/or after a determination is made on a request for waiver of recovery of the overpayment. However, under the process adopted to implement these final regulations we would not select a title XVI overpayment debt for referral to the Department of the Treasury or consumer reporting agencies while an administrative appeal regarding that debt is pending at any level of adjudication on the fact or amount of the overpayment or on waiver.

Comment: One organization asserted that there are problems in our administration of our programs that cause overpayments. Among the concerns are staffing in local offices, training for our employees, and documenting and acting on reports of changes potentially affecting eligibility or benefit amounts.

Response: Overpayments of benefits occur for many reasons. We take our responsibility for stewardship of the programs that we administer very seriously. That is why we constantly track our payment accuracy and strive to minimize overpayments. In addition, we are pursuing several initiatives that address the causes of overpayments and other matters described in the concerns and allegations conveyed by the organization. Notwithstanding the reasons for overpayments, we are responsible for recovering as much of the overpaid money as possible consistent with the law.

Comment: One organization stated that SSA should report information to consumer reporting agencies in accordance with the Fair Credit Reporting Act (FCRA). Specifically, SSA should use the credit reporting industry standard Metro2 format for reporting to consumer reporting agencies former SSI recipients who owe delinquent debts. In addition, SSA should use the automated consumer dispute verification process, which is a credit reporting industry facility for reporting and resolving consumer disputes about the credit report. It also encouraged SSA to meet with members of the organization to ensure the consistent reporting of accurate and complete information.

Response: Although the comment is not directly pertinent to these rules, we agree with the organization. We have been reporting delinquent title II overpayment debts to consumer reporting agencies since 1998. We realize the importance of reporting complete and accurate information to credit repositories. We have always complied with the FCRA. Additionally, SSA has been using both the Metro2 format and the automated consumer dispute verification process suggested by the commenter. In the Fall of 2000, SSA staff met with members of the credit reporting industry at workshops sponsored by them. We also communicate with members of the credit reporting industry throughout the year to remain current on the latest standards.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order (E.O.) 12866.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: December 19, 2001.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subparts E and N of part 416 and subpart D of part 422 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

2. Section 416.590 is added to read as follows:

§ 416.590 Are there additional methods for recovery of title XVI benefit overpayments?

(a) *General.* In addition to the methods specified in §§ 416.560, 416.570 and 416.580, we may recover an overpayment under title XVI of the Act from you under the rules in subpart D of part 422, provided:

(1) The overpayment occurred after you attained age 18;

(2) You are no longer entitled to benefits under title XVI of the Act; and

(3) Pursuant to paragraph (b) of this section, we have determined that the overpayment is otherwise unrecoverable under section 1631(b) of the Act.

(b) *When we consider an overpayment to be otherwise unrecoverable.* We consider an overpayment under title XVI of the Act to be otherwise unrecoverable under section 1631(b) of the Act if all of the following conditions are met:

(1) We have completed our billing system sequence (i.e., we have sent you an initial notice of the overpayment, a reminder notice, and a past-due notice) or we have suspended or terminated collection activity under applicable rules, such as, the Federal Claims Collection Standards in 31 CFR 903.2 or 903.3.

(2) We have not entered into an installment payment arrangement with you or, if we have entered into such an arrangement, you have failed to make any payment for two consecutive months.

(3) You have not requested waiver pursuant to § 416.550 or § 416.582 or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(4) You have not requested reconsideration of the initial overpayment determination pursuant to §§ 416.1407 and 416.1409 or, after a review conducted pursuant to § 416.1413, we have affirmed all or part of the initial overpayment determination.

(5) We cannot recover your overpayment pursuant to § 416.570 by adjustment of benefits payable to any individual other than you. For purposes of this paragraph, if you are a member of an eligible couple that is legally separated and/or living apart, we will deem unrecoverable from the other person that part of your overpayment which he or she did not receive.

3. The authority citation for subpart N of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

4. Section 416.1403 is amended by removing the word ''and'' at the end of paragraph (a)(16), removing the first period in paragraph (a)(17), removing ''See'' and adding ''see'' in its place in the parenthetical in paragraph (a)(17), removing the second period at the end of paragraph (a)(17) and adding a semicolon in its place, and adding new paragraphs (a)(18) and (19) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

* * * * *

(18) Determining whether we will refer information about your overpayment to a consumer reporting agency (see §§ 416.590 and 422.305 of this chapter); and

(19) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 416.590 and 422.310 of this chapter).

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

5. The authority citation for subpart D of part 422 is revised to read as follows:

Authority: Secs. 204(f), 205(a), 702(a)(5), and 1631(b) of the Social Security Act (42 U.S.C. 404(f), 405(a), 902(a)(5), and 1383(b)); 31 U.S.C. 3711(e); 31 U.S.C. 3716.

6. Section 422.301(b) is amended by removing the words ''title II'' and by removing ''§ 404.527'' and adding ''§§ 404.527 and 416.590'' in its place.

7. Section 422.305 is amended by removing the reference to ''title II'' in the heading and in paragraph (a).

[FR Doc. 01–31897 Filed 12–27–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8973]

RIN 1545–AW09

Allocation of Loss With Respect to Stock and Other Personal Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final Tax Regulations which remove temporary regulations relating to the allocation of loss recognized on the disposition of stock and other personal property. The loss allocation regulations primarily will affect taxpayers that claim the foreign tax credit and that incur losses with respect to personal property and are necessary to modify existing guidance with respect to loss allocation.

DATES: *Effective dates:* These regulations are effective January 8, 2002.

Applicability Dates: For dates of applicability, see §§ 1.865–1(f) and 1.865–2(e).

FOR FURTHER INFORMATION CONTACT: David A. Juster, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On January 11, 1999, final regulations (TD 8805, 1999–1 C.B. 371, the 1999 final regulations) addressing the allocation of loss on the disposition of stock (§ 1.865–2) and amending the foreign tax credit passive limitation grouping rules under § 1.904–4(c) were published in the **Federal Register** (64 FR 1505), together with temporary regulations relating to the allocation of loss on the disposition of personal property other than stock (§ 1.865–1T) and providing a special matching rule with respect to the allocation of certain stock losses (§ 1.865–2T). A notice of proposed rulemaking (REG–106905–98) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (64 FR 1571). No public hearing was requested or held. One written comment responding to the notice of proposed rulemaking was received. After consideration of the comment, the regulations are finalized substantially as proposed, and the corresponding temporary regulations are removed. This Treasury decision also

contains minor clarifying amendments to § 1.865–2 of the 1999 final regulations. The revisions are discussed below.

Explanation of Provisions

Section 1.865–1: Loss With Respect to Personal Property Other Than Stock

Section 1.865–1(a): General Rules

Taxpayers have inquired whether the regulations apply to section 166 bad debt deductions. Section 1.865–1 is intended to apply to all recognized losses with respect to personal property, unless otherwise excepted, whether or not the loss results from an actual sale or disposition. Although section 166 does not use the term *loss* in the context of describing worthless debts giving rise to a deduction under the statute, worthlessness deductions reflect economically sustained losses similar to losses described in section 165(g) with respect to worthless securities. Section 1.865–1(a)(1) of the final regulations clarifies that the loss allocation rules of § 1.865–1 apply to section 166 bad debt deductions, as well as losses on property that is marked-to-market (such as under section 475) and not excluded from the scope of these regulations (as are inventory property and certain derivative contracts).

One commentator requested that the final regulations clarify the proper allocation of a loss from the disposition of a partnership interest. Treasury and the Service do not believe that a special rule is required. Instead, loss on the disposition of a partnership interest is subject to the general rule of § 1.865–1(a) that allocates loss to the class of gross income to which gain from the sale of such property would give rise in the seller's hands, i.e., on a reciprocal-to-gain basis.

Section 1.865–1(b)(2): Contingent Payment Debt Instruments

Section 1.865–1(b)(2), explaining the particular application of the reciprocal-to-gain loss allocation rule to contingent payment debt instruments, provides that loss on an instrument to which § 1.1275–4(b) applies is allocated and apportioned to the class of interest income to which the instrument would give rise. The final regulation adopts the rule of the temporary regulation, reworded to clarify the interaction of this section with § 1.1275–4(b)(9)(iv)(A).

Section 1.865–1(c)(4): Unamortized Bond Premium

Section 1.865–1(c)(4) provides an exception from the general reciprocal-to-gain rule with respect to unamortized bond premium. The final regulations modify the text and add a new *Example 3* in § 1.865–1(e) to clarify that loss on a debt instrument is allocated against interest only to the extent of the amount of bond premium that could have been, but was not, amortized by the taxpayer before the loss was recognized.

Section 1.865–1(c)(6)(iii): Matching Rule

For discussion of modifications to the matching rule in response to comments, see the discussion below in connection with the stock loss matching rule of § 1.865–2(b)(4)(iii).

Section 1.865–1(f): Effective Dates

The final regulations apply to losses recognized on or after January 8, 2002. A taxpayer may apply the regulations, however, to loss recognized in taxable years beginning on or after January 1, 1987, subject to certain conditions.

Section 1.865–2: Loss With Respect to Stock

Section 1.865–2(a)(1): General Rules

A sentence is added to § 1.865–2(a)(1) to clarify that the loss allocation rules of § 1.865–2 apply to loss on stock (other than inventory) that is marked-to-market (such as under section 475).

Section 1.865–2(a)(3)(ii): Bona Fide Residents of Puerto Rico

Under section 933, a U.S. citizen or resident alien that is a bona fide resident of Puerto Rico is generally exempt from U.S. tax with respect to Puerto Rican source income, but remains subject to U.S. tax with respect to income derived from other sources. Consistent with the general rule of the 1999 final regulations allocating losses against gains and taking account of the special source rule of section 865(g)(3), § 1.865–2(a)(3)(ii) provides that a loss recognized by a U.S. citizen or resident alien that is a bona fide resident of Puerto Rico with respect to stock of a corporation that is engaged in a trade or business within Puerto Rico shall be allocated to reduce foreign source income. The final regulation, however, did not specifically state whether the stock loss is allocated against Puerto Rican source income that is exempt from tax under section 933 or against all of the bona fide resident's foreign source income. Section 1.865–2(a)(3)(ii) is clarified to provide that if gain from the sale of such stock would be Puerto Rican source income that is exempt from tax under section 933, the loss with respect to such stock shall be allocated to Puerto Rican source income. Under section 933(1), a loss allocated to Puerto Rican source income that is excluded from gross income under section 933 is not allowed as a deduction. See § 1.933–1(c).

Sections 1.865–1(c)(6)(iii) and 1.865–2(b)(4)(iii): Matching Rule

The temporary regulations provided that, to the extent a taxpayer recognizes foreign source income for tax purposes that results in the creation of a corresponding loss with respect to stock or other personal property, as the case may be, the loss shall be allocated and apportioned against such income. The preamble to the temporary regulations explained that this rule is intended to prevent taxpayers from avoiding the dividend recapture rule of § 1.865–2(b)(1) or from accelerating foreign source income and recognizing an offsetting U.S. loss.

One commenter characterized the rule as overly broad and the examples as unrealistic. The commenter recommended that the matching rule be eliminated from the final regulations or revised to target identified abuses more narrowly.

Taking these considerations into account, §§ 1.865–1(c)(6)(iii) and 1.865–2(b)(4)(iii) are modified to provide that the matching rule will only apply if a taxpayer engages in a transaction or series of transactions with a principal purpose of recognizing foreign source income that results in the creation of a corresponding loss. As an anti-abuse rule, the matching rule targets transactions that are designed to produce an artificial or accelerated recognition of income that directly results in the creation of a corresponding built-in loss. The step-down preferred transactions described in *Examples 4* and *5* of § 1.865–2T(b)(4)(iv) are transactions of this type; however, because those transactions are now expressly addressed by regulations at § 1.7701(l)–3, the final regulations omit *Examples 4* and *5.* In addition, *Example 6* of § 1.865–2T(b)(4)(iv) is revised and redesignated as *Example 6* of paragraph (b)(1)(iv) of § 1.865–2 to illustrate an amendment to the definition of the recapture period in § 1.865–2(d)(3) discussed below.

Section 1.865–2(b)(4)(iii) is also revised to clarify the interaction of the matching rule and the exceptions to the dividend recapture rule for de minimis or passive dividends. In the temporary regulations, the matching rule applied to amounts that otherwise were exempted from the dividend recapture rule under the passive or de minimis exceptions only if the taxpayer held the stock with a principal purpose of producing foreign source income and corresponding loss. Because the final regulations revise the matching rule to

incorporate a principal purpose test in all instances, the specific requirement of a principal purpose to apply the matching rule to de minimis or passive dividends is no longer necessary.

Section 1.865–2(d)(3): Recapture Period

The dividend recapture period set forth in § 1.865–2(d)(3) is revised to provide that the 24-month period ends on the date on which a taxpayer recognizes a loss with respect to stock. In addition, in connection with the revisions to the matching rule discussed above, the definition of the recapture period in § 1.865–2(d)(3) is expanded to provide that the recapture period is extended if the assets of the corporation are converted to low-risk investments with a principal purpose of enabling the taxpayer to hold the stock without significant risk of loss until the recapture period has expired. As noted above, *Example 6* of § 1.865–2T(b)(4)(iv) has been redesignated as *Example 6* of § 1.865–2(b)(1)(iv) and revised to illustrate the operation of this change to the definition of the recapture period. Finally, § 1.865–2(d)(3) is revised to clarify that the dividend recapture rule applies to a dividend paid after the date a loss is recognized, if the loss is incurred after the dividend was declared (i.e., when the stock is sold ex-dividend).

Section 1.865–2(e): Effective Dates

The final regulations retain the January 11, 1999 effective date of the identical provisions of the temporary regulations and provide that the amendments made by the final regulations apply to losses recognized on or after January 8, 2002. A taxpayer may apply the regulations, however, to loss recognized in any taxable year beginning on or after January 1, 1987, subject to certain conditions.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. A final regulatory flexibility analysis under 5 U.S.C. 604 has been prepared for the portion of this Treasury decision with respect to regulations issued under section 865 of the Internal Revenue Code. This analysis is set forth below.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Small Business Administration for comment on its impact on small business.

Regulatory Flexibility Analysis

It has been determined that a final regulatory flexibility analysis is required under 5 U.S.C. 604 with respect to this Treasury decision issued under section 865 of the Internal Revenue Code. These regulations will affect small entities such as small businesses but not other small entities, such as local government or tax exempt organizations, which do not pay taxes. The IRS and Treasury Department are not aware of any federal rules that duplicate, overlap or conflict with these regulations. The final regulations address the allocation of loss with respect to stock and other personal property. These regulations are necessary primarily for the proper computation of the foreign tax credit limitation under section 904 of the Internal Revenue Code. With respect to U.S. resident taxpayers, the regulations generally allocate losses against U.S. source income. Generally, this allocation simplifies the computation of the foreign tax credit limitation. None of the significant alternatives considered in drafting the regulations would have significantly altered the economic impact of the regulations on small entities. There are no alternative rules that are less burdensome to small entities but that accomplish the purposes of the statute.

Drafting Information

Various personnel from the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, the IRS and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for ''1.865–1T'' and ''1.865–2T'', revising the entry for ''1.865–2'', and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.861–8 also issued under 26 U.S.C. 882(c). * * *

Section 1.865–1 also issued under 26 U.S.C. 863(a) and 865(j)(1).

Section 1.865–2 also issued under 26 U.S.C. 863(a) and 865(j)(1). * * *

Par. 2. Section 1.861–8 is amended by:

1. Revising paragraphs (e)(7)(iii) and (e)(8).

2. Removing the authority citation at the end of the section.

The revisions read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

(7) * * *

(iii) *Allocation of loss recognized in taxable years after 1986.* See §§ 1.865–1 and 1.865–2 for rules regarding the allocation of certain loss recognized in taxable years beginning after December 31, 1986.

(8) *Net operating loss deduction.* A net operating loss deduction allowed under section 172 shall be allocated and apportioned in the same manner as the deductions giving rise to the net operating loss deduction.

* * * * *

Par. 3. Section 1.861–8T is amended as follows:

1. Paragraphs (e)(1) and (e)(3) through (e)(11) are revised.

2. Paragraph (h) is amended by removing the last sentence of the concluding text.

3. The authority citation at the end of the section is removed.

The revisions read as follows:

§ 1.861–8T Computation of taxable income from sources within the United States and for other sources and activities (temporary).

* * * * *

(e) * * *

(1) [Reserved]. For further guidance, see § 1.861–8(e)(1).

* * * * *

(3) through (11) [Reserved]. For further guidance, see § 1.861–8(e)(3) through (e)(11).

* * * * *

Par. 4. Section 1.865–1 is added to read as follows:

§ 1.865–1 Loss with respect to personal property other than stock.

(a) *General rules for allocation of loss*—(1) *Allocation against gain.* Except as otherwise provided in § 1.865–2 and paragraph (c) of this section, loss recognized with respect to personal property shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which gain from a sale of such property would give rise in the hands of the seller. For purposes of this section, loss includes bad debt deductions under section 166 and loss on property that is

marked-to-market (such as under section 475) and subject to the rules of this section. Thus, for example, loss recognized by a United States resident on the sale or worthlessness of a bond generally is allocated to reduce United States source income.

(2) *Loss attributable to foreign office.* Except as otherwise provided in § 1.865–2 and paragraph (c) of this section, and except with respect to loss subject to paragraph (b) of this section, in the case of loss recognized by a United States resident with respect to property that is attributable to an office or other fixed place of business in a foreign country within the meaning of section 865(e)(3), the loss shall be allocated to reduce foreign source income if a gain on the sale of the property would have been taxable by the foreign country and the highest marginal rate of tax imposed on such gains in the foreign country is at least 10 percent. However, paragraph (a)(1) of this section and not this paragraph (a)(2) will apply if gain on the sale of such property would be sourced under section 865(c), (d)(1)(B), or (d)(3).

(3) *Loss recognized by United States citizen or resident alien with foreign tax home.* Except as otherwise provided in § 1.865–2 and paragraph (c) of this section, and except with respect to loss subject to paragraph (b) of this section, in the case of loss with respect to property recognized by a United States citizen or resident alien that has a tax home (as defined in section 911(d)(3)) in a foreign country, the loss shall be allocated to reduce foreign source income if a gain on the sale of such property would have been taxable by a foreign country and the highest marginal rate of tax imposed on such gains in the foreign country is at least 10 percent.

(4) *Allocation for purposes of section 904.* For purposes of section 904, loss recognized with respect to property that is allocated to foreign source income under this paragraph (a) shall be allocated to the separate category under section 904(d) to which gain on the sale of the property would have been assigned (without regard to section 904(d)(2)(A)(iii)(III)). For purposes of § 1.904–4(c)(2)(ii)(A), any such loss allocated to passive income shall be allocated (prior to the application of § 1.904–4(c)(2)(ii)(B)) to the group of passive income to which gain on a sale of the property would have been assigned had a sale of the property resulted in the recognition of a gain under the law of the relevant foreign jurisdiction or jurisdictions.

(5) *Loss recognized by partnership.* A partner's distributive share of loss recognized by a partnership with respect to personal property shall be allocated and apportioned in accordance with this section as if the partner had recognized the loss. If loss is attributable to an office or other fixed place of business of the partnership within the meaning of section 865(e)(3), such office or fixed place of business shall be considered to be an office of the partner for purposes of this section.

(b) *Special rules of application*—(1) *Depreciable property.* In the case of a loss recognized with respect to depreciable personal property, the gain referred to in paragraph (a)(1) of this section is the gain that would be sourced under section 865(c)(1) (depreciation recapture).

(2) *Contingent payment debt instrument.* Loss described in the last sentence of § 1.1275–4(b)(9)(iv)(A) that is recognized with respect to a contingent payment debt instrument to which § 1.1275–4(b) applies (instruments issued for money or publicly traded property) shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which interest income from the instrument (in the amount of the loss subject to this paragraph (b)(2)) would give rise.

(c) *Exceptions*—(1) Foreign currency and certain financial instruments. This section does not apply to loss governed by section 988 and loss recognized with respect to options contracts or derivative financial instruments, including futures contracts, forward contracts, notional principal contracts, or evidence of an interest in any of the foregoing.

(2) *Inventory.* This section does not apply to loss recognized with respect to property described in section 1221(a)(1).

(3) *Interest equivalents and trade receivables.* Loss subject to § 1.861–9T(b) (loss equivalent to interest expense and loss on trade receivables) shall be allocated and apportioned under the rules of § 1.861–9T and not under the rules of this section.

(4) *Unamortized bond premium.* If a taxpayer recognizing loss with respect to a bond (within the meaning of § 1.171–1(b)) did not amortize bond premium to the full extent permitted by section 171 and the regulations thereunder, then, to the extent of the amount of bond premium that could have been, but was not, amortized by the taxpayer, loss recognized with respect to the bond shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which interest income from the bond was assigned.

(5) *Accrued interest.* Loss attributable to accrued but unpaid interest on a debt obligation shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which interest income from the obligation was assigned. For purposes of this section, whether loss is attributable to accrued but unpaid interest (rather than to principal) shall be determined under the principles of §§ 1.61–7(d) and 1.446–2(e).

(6) *Anti-abuse rules*—(i) *Transactions involving built-in losses.* If one of the principal purposes of a transaction is to change the allocation of a built-in loss with respect to personal property by transferring the property to another person, qualified business unit, office or other fixed place of business, or branch that subsequently recognizes the loss, the loss shall be allocated by the transferee as if it were recognized by the transferor immediately prior to the transaction. If one of the principal purposes of a change of residence is to change the allocation of a built-in loss with respect to personal property, the loss shall be allocated as if the change of residence had not occurred. If one of the principal purposes of a transaction is to change the allocation of a built-in loss on the disposition of personal property by converting the original property into other property and subsequently recognizing loss with respect to such other property, the loss shall be allocated as if it were recognized with respect to the original property immediately prior to the transaction. Transactions subject to this paragraph shall include, without limitation, reorganizations within the meaning of section 368(a), liquidations under section 332, transfers to a corporation under section 351, transfers to a partnership under section 721, transfers to a trust, distributions by a partnership, distributions by a trust, transfers to or from a qualified business unit, office or other fixed place of business, or branch, or exchanges under section 1031. A person may have a principal purpose of affecting loss allocation even though this purpose is outweighed by other purposes (taken together or separately).

(ii) *Offsetting positions.* If a taxpayer recognizes loss with respect to personal property and the taxpayer (or any person described in section 267(b) (after

application of section 267(c)), 267(e), 318 or 482 with respect to the taxpayer) holds (or held) offsetting positions with respect to such property with a principal purpose of recognizing foreign source income and United States source loss, the loss shall be allocated and apportioned against such foreign source income. For purposes of this paragraph (c)(6)(ii), positions are offsetting if the risk of loss of holding one or more positions is substantially diminished by holding one or more other positions.

(iii) *Matching rule.* If a taxpayer (or a person described in section 1059(c)(3)(C) with respect to the taxpayer) engages in a transaction or series of transactions with a principal purpose of recognizing foreign source income that results in the creation of a corresponding loss with respect to personal property (as a consequence of the rules regarding the timing of recognition of income, for example), the loss shall be allocated and apportioned against such income to the extent of the recognized foreign source income. For an example illustrating a similar rule with respect to stock loss, see § 1.865–2(b)(4)(iv) *Example 3.*

(d) *Definitions*—(1) *Contingent payment debt instrument.* A contingent payment debt instrument is any debt instrument that is subject to § 1.1275–4.

(2) *Depreciable personal property.* Depreciable personal property is any property described in section 865(c)(4)(A).

(3) *Terms defined in § 1.861–8.* See § 1.861–8 for the meaning of *class of gross income, statutory grouping of gross income,* and *residual grouping of gross income.*

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example 1. On January 1, 2000, *A,* a domestic corporation, purchases for $1,000 a machine that produces widgets, which *A* sells in the United States and throughout the world. Throughout *A*'s holding period, the machine is located and used in Country *X.* During *A*'s holding period, *A* incurs depreciation deductions of $400 with respect to the machine. Under § 1.861–8, *A* allocates and apportions depreciation deductions of $250 against foreign source general limitation income and $150 against U.S. source income. On December 12, 2002, A sells the machine for $100 and recognizes a loss of $500. Because the machine was used predominantly outside the United States, under sections 865(c)(1)(B) and 865(c)(3)(B)(ii) gain on the disposition of the machine would be foreign source general limitation income to the extent of the depreciation adjustments. Therefore, under paragraph (b)(1) of this section, the entire $500 loss is allocated against foreign source general limitation income.

Example 2. On January 1, 2002, *A*, a domestic corporation, loans $2,000 to *N,* its wholly-owned controlled foreign corporation, in exchange for a contingent payment debt instrument subject to § 1.1275–4(b). During 2002 through 2004, *A* accrues and receives interest income of $630, $150 of which is foreign source general limitation income and $480 of which is foreign source passive income under section 904(d)(3). Assume there are no positive or negative adjustments pursuant to § 1.1275–4(b)(6) in 2002 through 2004. On January 1, 2005, *A* disposes of the debt instrument and recognizes a $770 loss. Under § 1.1275–4(b)(8)(ii), $630 of the loss is treated as ordinary loss and $140 is treated as capital loss. Assume that $140 of interest income earned in 2005 with respect to the debt instrument would be foreign source passive income under section 904(d)(3). Under § 1.1275–4(b)(9)(iv), $150 of the ordinary loss is allocated against foreign source general limitation income and $480 of the ordinary loss is allocated against foreign source passive income. Under paragraph (b)(2) of this section, the $140 capital loss is allocated against foreign source passive income.

Example 3. (i) On January 1, 2003, *A,* a domestic corporation, purchases for $1,200 a taxable bond maturing on December 31, 2008, with a stated principal amount of $1,000, payable at maturity. The bond provides for unconditional payments of interest of $100, payable December 31 of each year. The issuer of the bond is a foreign corporation and interest on the bond is thus foreign source. Interest payments for 2003 and 2004 are timely made. *A* does not elect to amortize its bond premium under section 171 and the regulations thereunder, which would have permitted *A* to offset the $100 of interest income by $28.72 of bond premium in 2003, and by $30.42 in 2004. On January 1, 2005, *A* sells the bond and recognizes a $100 loss. Under paragraph (c)(4) of this section, $59.14 of the loss is allocated against foreign source income. Under paragraph (a)(1) of this section, the remaining $40.86 of the loss is allocated against U.S. source income.

(ii) The facts are the same as in paragraph (i) of this *Example 3,* except that *A* made the election to amortize its bond premium effective for taxable year 2004 (see § 1.171–4(c)). Under paragraph (c)(4) of this section, $28.72 of the loss is allocated against foreign source income. Under paragraph (a)(1) of this section, the remaining $71.28 of the loss is allocated against U.S. source income.

Example 4. On January 1, 2002, *A*, a domestic corporation, purchases for $1,000 a bond maturing December 31, 2014, with a stated principal amount of $1,000, payable at maturity. The bond provides for unconditional payments of interest of $100, payable December 31 of each year. The issuer of the bond is a foreign corporation and interest on the bond is thus foreign source. Between 2002 and 2006, *A* accrues and receives foreign source interest income of $500 with respect to the bond. On January 1, 2007, *A* sells the bond and recognizes a $500 loss. Under paragraph (a)(1) of this section, the $500 loss is allocated against U.S. source income.

Example 5. On January 1, 2002, *A,* a domestic corporation on the accrual method of accounting, purchases for $1,000 a bond maturing December 31, 2012, with a stated principal amount of $1,000, payable at maturity. The bond provides for unconditional payments of interest of $100, payable December 31 of each year. The issuer of the bond is a foreign corporation and interest on the bond is thus foreign source. On June 10, 2002, after *A* has accrued $44 of interest income, but before any interest has been paid, the issuer suddenly becomes insolvent and declares bankruptcy. *A* sells the bond (including the accrued interest) for $20. Assuming that *A* properly accrued $44 of interest income, *A* treats the $20 proceeds from the sale of the bond as payment of interest previously accrued and recognizes a $1,000 loss with respect to the bond principal and a $24 loss with respect to the accrued interest. See § 1.61–7(d). Under paragraph (a)(1) of this section, the $1,000 loss with respect to the principal is allocated against U.S. source income. Under paragraph (c)(5) of this section, the $24 loss with respect to accrued but unpaid interest is allocated against foreign source interest income.

(f) *Effective date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section is applicable to loss recognized on or after January 8, 2002. For purposes of this paragraph (f), loss that is recognized but deferred (for example, under section 267 or 1092) shall be treated as recognized at the time the loss is taken into account.

(2) *Application to prior periods.* A taxpayer may apply the rules of this section to losses recognized in any taxable year beginning on or after January 1, 1987, and all subsequent years, provided that—

(i) The taxpayer's tax liability as shown on an original or amended tax return is consistent with the rules of this section for each such year for which the statute of limitations does not preclude the filing of an amended return on June 30, 2002; and

(ii) The taxpayer makes appropriate adjustments to eliminate any double benefit arising from the application of this section to years that are not open for assessment.

(3) *Examples.* See § 1.865–2(e)(3) for examples illustrating an applicability date provision similar to the applicability date provided in this paragraph (f).

§ 1.865–1T [Removed]

Par. 5. Section 1.865–1T is removed.

Par. 6. Section 1.865–2 is amended by:

1. Adding a sentence after the first sentence of paragraph (a)(1).

2. Adding two sentences at the end of paragraph (a)(3)(ii).

3. Adding *Example 6* to paragraph (b)(1)(iv).

4. Revising paragraph (b)(4)(iii).

5. Adding *Example 3* to paragraph (b)(4)(iv).

6. Revising paragraphs (d)(3), (e)(1), and (e)(2)(i).

The revisions and additions read as follows:

§ 1.865–2 Loss with respect to stock.

(a)(1) * * * For purposes of this section, loss includes loss on property that is marked-to-market (such as under section 475) and subject to the rules of this section. * * *

* * * * *

(3) * * *

(ii) * * * If gain from a sale of such stock would give rise to income exempt from tax under section 933, the loss with respect to such stock shall be allocated to amounts that are excluded from gross income under section 933(1) and therefore shall not be allowed as a deduction from gross income. See section 933(1) and § 1.933–1(c).

* * * * *

(b) * * *

(1) * * *

(iv) * * *

Example 6. (i) On January 1, 1998, *P*, a domestic corporation, purchases *N*, a foreign corporation, for $1,000. On March 1, 1998, *P* causes *N* to sell its operating assets, distribute a $400 general limitation dividend to *P*, and invest its remaining $600 in short-term government securities. *P* converted the *N* assets into low-risk investments with a principal purpose of holding the *N* stock without significant risk of loss until the recapture period expired. *N* earns interest income from the securities. The income constitutes subpart F income that is included in *P*'s income under section 951, increasing *P*'s basis in the *N* stock under section 961(a). On March 1, 2002, *P* sells *N* and recognizes a $400 loss.

(ii) Pursuant to paragraph (d)(3) of this section, the recapture period is increased by the period in which *N*'s assets were held as low-risk investments because *P* caused *N*'s assets to be converted into and held as low-risk investments with a principal purpose of enabling *P* to hold the *N* stock without significant risk of loss. Accordingly, under paragraph (b)(1)(i) of this section the $400 loss is allocated against foreign source general limitation income.

* * * * *

(4) * * *

(iii) *Matching rule.* If a taxpayer (or a person described in section 1059(c)(3)(C) with respect to the taxpayer) engages in a transaction or series of transactions with a principal purpose of recognizing foreign source income that results in the creation of a corresponding loss with respect to stock (as a consequence of the rules regarding the timing of recognition of income, for example), the loss shall be allocated and apportioned against such income to the extent of the recognized foreign source income. This paragraph (b)(4)(iii) applies to any portion of a loss that is not allocated under paragraph (b)(1)(i) of this section (dividend recapture rule), including a loss in excess of the dividend recapture amount and a loss that is related to a dividend recapture amount described in paragraph (b)(1)(ii) (de minimis exception) or (b)(1)(iii) (passive dividend exception) of this section.

(iv) *Examples.* * * *

Example 3. (i) *Facts.* On January 1, 2002, *P* and *Q*, domestic corporations, form *R*, a domestic partnership. The corporations and partnership use the calendar year as their taxable year. *P* contributes $900 to *R* in exchange for a 90-percent partnership interest and *Q* contributes $100 to *R* in exchange for a 10-percent partnership interest. *R* purchases a dance studio in country *X* for $1,000. On January 2, 2002, *R* enters into contracts to provide dance lessons in Country *X* for a 5-year period beginning January 1, 2003. These contracts are prepaid by the dance studio customers on December 31, 2002, and *R* recognizes foreign source taxable income of $500 from the prepayments (*R*'s only income in 2002). *P* takes into income its $450 distributive share of partnership taxable income. On January 1, 2003, *P*'s basis in its partnership interest is $1,350 ($900 from its contribution under section 722, increased by its $450 distributive share of partnership income under section 705). On September 22, 2003, *P* contributes its *R* partnership interest to *S*, a newly-formed domestic corporation, in exchange for all the stock of *S*. Under section 358, *P*'s basis in *S* is $1,350. On December 1, 2003, *P* sells *S* to an unrelated party for $1050 and recognizes a $300 loss.

(ii) *Loss allocation. P* recognized foreign source income for tax purposes before the income had economically accrued, and the accelerated recognition of income increased *P*'s basis in *R* without increasing its value by a corresponding amount, which resulted in the creation of a built-in loss with respect to the *S* stock. Under paragraph (b)(4)(iii) of this section the $300 loss is allocated against foreign source income if *P* had a principal purpose of recognizing foreign source income and corresponding loss.

* * * * *

(d) * * *

(3) *Recapture period.* A recapture period is the 24-month period ending on the date on which a taxpayer recognized a loss with respect to stock. For example, if a taxpayer recognizes a loss on March 15, 2002, the recapture period begins on and includes March 16, 2000, and ends on and includes March 15, 2002. A recapture period is increased by any period of time in which the taxpayer has diminished its risk of loss in a manner described in section 246(c)(4) and the regulations thereunder and by any period in which the assets of the corporation are hedged against risk of loss (or are converted into and held as low-risk investments) with a principal purpose of enabling the taxpayer to hold the stock without significant risk of loss until the recapture period has expired. In the case of a loss recognized after a dividend is declared but before such dividend is paid, the recapture period is extended through the date on which the dividend is paid.

* * * * *

(e) *Effective date*—(1) *In general.* This section is applicable to loss recognized on or after January 11, 1999, except that paragraphs (a)(3)(ii), (b)(1)(iv) *Example 6*, (b)(4)(iii), (b)(4)(iv) *Example 3*, and (d)(3) of this section are applicable to loss recognized on or after January 8, 2002. For purposes of this paragraph (e), loss that is recognized but deferred (for example, under section 267 or 1092) shall be treated as recognized at the time the loss is taken into account.

(2) * * *

(i) The taxpayer's tax liability as shown on an original or amended tax return is consistent with the rules of this section for each such year for which the statute of limitations does not preclude the filing of an amended return on June 30, 2002; and

* * * * *

§ 1.865–2T [Removed]

Par. 7. Section 1.865–2T is removed.

§ 1.904–4 [Amended]

Par. 8. In § 1.904–4, paragraph (c)(2)(ii)(A), remove the language ''1.865–1T through 1.865–2T'' at the end of the first sentence and add ''1.865–1 and 1.865–2'' in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 19, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–31819 Filed 12–27–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

[FinCEN Issuance 2001–2]

Financial Crimes Enforcement Network; Bank Secrecy Act Regulations—Issuance Concerning the Requirement that Money Transmitters and Money Order and Traveler's Check Issuers, Sellers, and Redeemers Report Suspicious Transactions; Effective Date and Reporting Form

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Guidance on reporting requirement effective date and form.

SUMMARY: This document reminds money transmitters and money order and traveler's check issuers, sellers, and redeemers of the January 1, 2002 effective date for the requirement to report suspicious transactions. In addition, this document explains which form these businesses must use to report suspicious transactions.

FOR FURTHER INFORMATION CONTACT: Patrice Motz, Money Services Business Program, Office of Compliance and Regulatory Enforcement, FinCEN (800) 949–2732; Judith Starr, Chief Counsel or Cynthia L. Clark, Deputy Chief Counsel, FinCEN (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5331, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g), to require financial institutions to report suspicious transactions. On March 14, 2000, FinCEN issued a final rule requiring money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks, to report suspicious transactions. (65 FR 13683).

II. FinCEN Issuance 2001–2

This document, FinCEN Issuance 2001–2, reminds money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks that the requirement to report suspicious transactions applies to transactions occurring on or after January 1, 2002.[1] A report of a suspicious transaction must be filed no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a report of the suspicious transaction. *See,* 31 CFR 103.20(b)(3).

FinCEN is developing a form to be used solely by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks to report suspicious transactions. That form, the Suspicious Activity Report—MSB (''SAR–MSB''), will be published in the **Federal Register** for public comment. In the meantime, money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks are to use the existing bank suspicious activity report, Form TD F 90–22.47, to report suspicious activities. Money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks are requested to enter the letters ''MSB'' in block letters at the top of the form and in the empty space in item 5 of the TD F 90–22.47. Further information about completing the TD F 90–22.47 is available on the general FinCEN Web site at *http://www.treas.gov/fincen* and on the site specific to money services businesses at *http://www.msb.gov.*

Money services businesses are encouraged to continue to use the Financial Institutions Hotline to voluntarily report to law enforcement suspicious transactions that may relate to recent terrorist activity against the United States. The Hotline was established to facilitate the immediate transmittal of this information to law enforcement. The use of the Hotline is voluntary and does not negate the responsibility of a particular money services business to file a TD F 90–22.47.

Dated: December 20, 2001.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 01–31851 Filed 12–27–01; 8:45 am]

BILLING CODE 4820–03–P

[1] The information collection in this Issuance has been approved by the Office of Management and Budget (''OMB'') in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1506–0001.

An agency may not conduct or sponsor, and person is not required to respond to, a collection of information unless it displays a valid control number.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 010815207–1285–03]

RIN 0651–AB41

Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: In implementing the provisions of the American Inventors Protection Act of 1999 related to the eighteen-month publication of patent applications, the United States Patent and Trademark Office (Office) revised the rules of practice related to requirements for claiming the benefit of a prior-filed application. The Office is now revising the time period for claiming the benefit of a prior-filed application in an application filed under the Patent Cooperation Treaty (PCT), revising the time period for filing an English language translation of a non-English language provisional application, and making other technical corrections to the rules of practice related to eighteen-month publication.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke or Joni Y. Chang, Legal Advisors, Office of Patent Legal Administration, by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9399, marked to the attention of Robert A. Clarke.

SUPPLEMENTARY INFORMATION: The American Inventors Protection Act of 1999 was enacted into law on November 29, 1999. *See* Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999). The American Inventors Protection Act of 1999 contained a number of changes to title 35, United States Code, including provisions for the publication of pending applications for patent, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code (''eighteen-month publication''). The Office implemented the eighteen-month publication provisions of the American Inventors Protection Act of 1999 in a final rule published in September of 2000. *See Changes to Implement Eighteen-Month Publication of Patent*

Applications, 65 FR 57023 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63 (Oct. 10, 2000) (final rule).

Section 4503(a) of the American Inventors Protection Act of 1999 amended 35 U.S.C. 119(b) to provide that no application for patent shall be entitled to a right of priority under 35 U.S.C. 119(a)-(d) unless a claim identifying the foreign application is filed at such time during the pendency of the application as required by the Office. Section 4503(b) of the American Inventors Protection Act of 1999 amended 35 U.S.C. 119(e) and 120 to provide that no application shall be entitled to the benefit of a prior-filed application unless an amendment containing the specific reference to the prior-filed application is submitted at such time during the pendency of the application as required by the Office. Section 4503 of the American Inventors Protection Act of 1999 also amended 35 U.S.C. 119 and 120 to permit the Office to establish procedures for accepting an unintentionally delayed claim for the benefit of a prior-filed application. Section 4503 of the American Inventors Protection Act of 1999 applies to applications filed under 35 U.S.C. 111 on or after November 29, 2000, and to applications entering the national stage after compliance with 35 U.S.C. 371 that resulted from international applications filed on or after November 29, 2000. *See* Pub. L. 106–113, § 4508, 113 Stat. at 1501A–566 through 1501A–567. This final rule amends 37 CFR 1.55 and 1.78 to: (1) Revise the requirements for claiming the benefit of a prior-filed application in an application filed under the PCT; (2) revise the time period and requirements for filing an English language translation of a non-English language provisional application; and (3) expressly indicate that the time period requirements which implement the provisions of § 4503 of the American Inventors Protection Act of 1999 do not apply to applications filed before November 29, 2000.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.14: Section 1.14(i)(2) is amended to correct its reference to ''35 U.S.C. 154(d)(4) (formerly indicated as ''35 U.S.C. 154(2)(d)(4)'').

Section 1.55: Section 1.55(a)(1)(i) is amended such that the rules of practice expressly indicate that the time periods in § 1.55(a)(1)(i) do not apply in an application under 35 U.S.C. 111(a) if the application is: (1) an application for a design patent; or (2) an application filed before November 29, 2000. The Office indicated that the changes to § 1.55 (and § 1.78) to implement eighteen-month publication applied only to applications filed on or after November 29, 2000. *See Changes to Implement Eighteen-Month Publication of Patent Applications,* 65 FR at 57024, 1239 *Off. Gaz. Pat. Office* at 63. The Office, however, has received enough inquiries about whether the time periods set forth in § 1.55(a)(1)(i) (and § 1.78(a)(2) and § 1.78(a)(5)) apply to particular applications that the Office has decided to place this information in § 1.55 (and § 1.78) itself.

Section 1.55(c) is amended to expressly indicate that a petition under § 1.55(c) to accept the delayed claim must also be accompanied by the claim (*i.e.,* the claim required by 35 U.S.C. 119(a)–(d) and § 1.55) for priority to the prior foreign application, unless previously submitted.

Section 1.78: Section 1.78(a)(1) is amended to Make its provisions applicable to international applications designating the United States of America. The phrase ''nonprovisional application'' as used in the rules of practice means either an application filed under 35 U.S.C. 111(a) or an international application filed under 35 U.S.C. 363 that entered the national stage after compliance with 35 U.S.C. 371. *See* § 1.9(a)(3). Thus, provisions which apply only to a nonprovisional application (*e.g.*, the requirement in § 1.78(a)(2)(iii) for a specific reference in an application data sheet (§ 1.76) or the specification) do not apply to any international application that does not enter national stage processing under 35 U.S.C. 371. The specific reference requirements of 35 U.S.C. 119(e) and 120 are met in such an international application by a specific reference to the prior-filed application in the international application papers (*e.g.*, in the Request (PCT Rule 4.10 and § 1.434(d)(2)), or a correction or addition in accordance with PCT Rule 26*bis*).

Section 1.78(a)(2) is amended to place its provisions in separate paragraphs (a)(2)(i) through (a)(2)(iv) for clarity. Section 1.78(a)(2) is also amended to make its provisions applicable to international applications designating the United States of America, and to set forth the time period for making a claim (providing the specific reference required by § 1.78(a)(2)(i)) for both an application filed under 35 U.S.C. 111(a) and an international application designating the United States of America which entered the national stage after compliance with 35 U.S.C. 371.

Specifically, if the later-filed application is an application filed under 35 U.S.C. 111(a), the specific reference required by § 1.78(a)(2)(i) must be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If, however, the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, the specific reference required by § 1.78(a)(2)(i) must be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. This reference must, in any event, be submitted during the pendency of the later-filed application. The provisions relating to an application filed under 35 U.S.C. 111(a) do not change the time period for submitting a specific reference in such applications. The provisions relating to an international application designating the United States of America which entered the national stage after compliance with 35 U.S.C. 371, however, do change the time period for submitting a specific reference to any prior-filed application for which a benefit is claimed in such international applications in that the four-month period is measured from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) rather than the actual filing date of the international application under 35 U.S.C. 363.

Section 1.78(a)(2) is also amended to eliminate the requirement that if the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English. The Office is eliminating this requirement because: (1) The Office will not delay publication of the application if this requirement is not met; and (2) this information can be obtained from other sources.

Section 1.78(a)(2) is also amended such that the rules of practice expressly indicate that the time periods in § 1.78(a)(2)(ii) do not apply if the later-filed application is: (1) An application for a design patent; (2) an application filed under 35 U.S.C. 111(a) before November 29, 2000; or (3) a nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000. The Office indicated that the changes to § 1.78 to implement eighteen-month publication applied only to applications

filed on or after November 29, 2000. *See Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57024, 1239 *Off. Gaz. Pat. Office* at 63. The Office, however, has received enough inquiries about whether the time periods set forth in § 1.78 apply to particular applications that the Office has decided to place this information in § 1.78 itself.

Section 1.78(a)(2) is also amended to change the sentence ''[t]he identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number'' to ''[t]he identification of an application by application number under this section is the identification of every application assigned that application number necessary for a specific reference required by 35 U.S.C. 120 to every such application assigned that application number.'' That is, a continued prosecution application under § 1.53(d) (CPA) does not require any additional identification of or reference to the prior application (or any prior application assigned the application number of such application under § 1.53(d)) under 35 U.S.C. 120 and § 1.78(a)(2) other than the identification of the prior application in the request required by § 1.53(d) for a CPA. *See Changes to Patent Practice and Procedure*, 62 FR 53131, 53144 (Oct. 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 73 (Oct. 21, 1997) (final rule). The change to this provision clarifies that the other provisions of § 1.78(a)(2) (*e.g.*, that the claim be in the application data sheet or the first sentence of the specification) remain applicable when an application under § 1.53(b) claims the benefit under 35 U.S.C. 120 of a continued prosecution application filed under § 1.53(d).

Section 1.78(a)(3) is amended to expressly indicate that a petition under § 1.78(a)(3) to accept the delayed claim must also be accompanied by the claim (*i.e.*, the reference required by 35 U.S.C. 120 and § 1.78(a)(2)) to the benefit of the prior-filed application, unless previously submitted. Section 1.78(a)(3) is also amended to change ''paragraph (a)(2)'' to paragraph ''(a)(2)(ii)'' for consistency with the changes to § 1.78(a)(2).

Section 1.78(a)(3) provides that if the reference required by 35 U.S.C. 120 and § 1.78(a)(2) of this section is presented in a nonprovisional application after the time period provided by § 1.78(a)(2)(ii), the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States may be accepted if the applicant files a petition to accept the delayed claim that is accompanied by: (1) the reference required by 35 U.S.C. 120 and § 1.78(a)(2) to the prior-filed application (unless previously submitted); (2) the surcharge set forth in § 1.17(t); and (3) a statement that the entire delay between the date the claim was due under § 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

If an applicant includes a claim to the benefit of a prior-filed nonprovisional application or international application designating the United States elsewhere in the application but not in the manner specified in § 1.78(a)(2)(i) and (iii) (*e.g.*, if the claim is included in an unexecuted oath or declaration or the application transmittal letter) within the time period set forth in § 1.78(a)(2)(ii), the Office will not require a petition (and the surcharge under § 1.17(t)) to correct the claim if the information concerning the claim contained elsewhere in the application was recognized by the Office as shown by its inclusion on a filing receipt. This is because the application will have been scheduled for publication on the basis of the information concerning the claim contained elsewhere in the application within the time period set forth in § 1.78(a)(2)(ii). Of course, the applicant must still submit the claim in the manner specified in § 1.78(a)(2)(i) and (iii) (*i.e.*, by an amendment in the first sentence of the specification or in an application data sheet) to have a proper claim under 35 U.S.C. 120 and § 1.78 to the benefit of a prior-filed application. If, however, an applicant includes such a claim elsewhere in the application and not in the manner specified in § 1.78(a)(2)(i) and (iii), and the claim is not recognized by the Office as shown by its absence on the filing receipt (*e.g.*, if the claim is in a part of the application where priority or continuity claims are not conventionally located, such as the body of the specification), the Office will require a petition (and the surcharge under § 1.17(t)) to correct such claim. This is because the application will not have been scheduled for publication on the basis of the information concerning the claim contained elsewhere in the application.

Section 1.78(a)(4) is amended to make its provisions applicable to international applications designating the United States of America.

Section 1.78(a)(5) is amended to place its provisions in separate paragraphs (a)(5)(i) through (a)(5)(iv) for clarity. Section 1.78(a)(5) is also amended to: (1) Make its provisions applicable to international applications designating the United States of America; (2) set forth the time period for making a claim (providing the specific reference required by § 1.78(a)(5)) for both an application filed under 35 U.S.C. 111(a) and an international application designating the United States of America which entered the national stage after compliance with 35 U.S.C. 371; and (3) change the time period and requirements for filing an English language translation of a non-English language provisional application.

Specifically, if the later-filed application is an application filed under 35 U.S.C. 111(a), the specific reference required by § 1.78(a)(5)(i) must be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If, however, the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, the specific reference required by § 1.78(a)(5)(i) must be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. This reference must, in any event, be submitted during the pendency of the later-filed application. The provisions relating to an application filed under 35 U.S.C. 111(a) do not change the time period for submitting a specific reference in such applications. The provisions relating to an international application designating the United States of America which entered the national stage after compliance with 35 U.S.C. 371, however, do change the time period for submitting a specific reference to any prior-filed application for which a benefit is claimed in such international applications in that the four-month period is measured from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) rather than the actual filing date of the international application under 35 U.S.C. 363.

Section 1.78(a)(5) is also amended such that the rules of practice expressly indicate that the time periods in § 1.78(a)(5)(ii) do not apply if the later-filed application is: (1) an application filed under 35 U.S.C. 111(a) before November 29, 2000; or (2) a nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

Section 1.78(a)(5) is also amended to provide that if a provisional application was filed in a language other than

English and an English-language translation of the provisional application and a statement that the translation is accurate were not previously filed in the provisional application or the nonprovisional application, applicant will be notified and given a period of time within which to file an English-language translation of the non-English-language provisional application and a statement that the translation is accurate. In a pending nonprovisional application, failure to timely reply to such a notice will result in abandonment of the application. Thus, § 1.78(a)(5) no longer provides that if a provisional application was filed in a language other than English, a claim to the benefit of such provisional application is waived if an English language translation of a non-English language provisional application is not submitted within the later of four months from the actual filing date of the nonprovisional application or sixteen months from the filing date of the prior-filed provisional application. In the event that the Office schedules an application that claims the benefit of a provisional application filed in a language other than English for publication without issuing a notice requiring the applicant to file English-language translation of the non-English-language provisional application, the applicant should file the English-language translation of the non-English-language provisional application and a statement that the translation is accurate before the scheduled publication date. This change to § 1.78(a)(5) allows applicant to file an English-language translation of a non-English language provisional application either in the provisional application or in each nonprovisional application that claims the benefit of the provisional application.

Section 1.78(a)(5) is also amended to delete the term ''copending,'' as 35 U.S.C. 119(e) no longer requires copendency between a nonprovisional application and a provisional application for the nonprovisional application to claim the benefit of the filing date of the provisional application under 35 U.S.C. 119(e). 35 U.S.C. 119(e)(1) continues to require that any nonprovisional application claiming the benefit of a provisional application be filed within twelve months after the filing date of the provisional application (or the next succeeding business day if the date that is twelve months after the filing date of the provisional application falls on a Saturday, Sunday, or Federal holiday). *See Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR 50092, 50098 (Aug. 16, 2000), 1238 *Off. Gaz. Pat. Office* 13, 18–19 (Sept. 5, 2000) (final rule) (comment 2 and response).

Section 1.78(a)(6) is amended to expressly indicate that a petition under § 1.78(a)(6) to accept the delayed claim must also be accompanied by the claim (*i.e.,* the reference required by 35 U.S.C. 119(e) and § 1.78(a)(5)) to the benefit of the prior-filed provisional application, unless previously submitted. Section 1.78(a)(6) is also amended to change ''paragraph (a)(5)'' to paragraph ''(a)(5)(ii)'' for consistency with the changes to § 1.78(a)(5).

Section 1.78(a)(6) provides that if the reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section is presented in a nonprovisional application after the time period provided by § 1.78(a)(5)(ii), the claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application may be accepted if the applicant files a petition to accept the delayed claim that is accompanied by: (1) the reference required by 35 U.S.C. 119(e) and § 1.78(a)(5) to the prior-filed provisional application (unless previously submitted); (2) the surcharge set forth in § 1.17(t); and (3) a statement that the entire delay between the date the claim was due under § 1.78(a)(5)(ii) and the date the claim was filed was unintentional.

If an applicant includes a claim to the benefit of a prior-filed provisional application elsewhere in the application but not in the manner specified in § 1.78(a)(5)(i) and (iii) (*e.g.,* if the claim is included in an unexecuted oath or declaration or the application transmittal letter) within the time period set forth in § 1.78(a)(5)(ii), the Office will not require a petition (and the surcharge under § 1.17(t)) to correct the claim if the information concerning the claim contained elsewhere in the application was recognized by the Office as shown by its inclusion on a filing receipt. This is because the application will have been scheduled for publication on the basis of the information concerning the claim contained elsewhere in the application within the time period set forth in § 1.78(a)(5)(ii). Of course, the applicant must still submit the claim in the manner specified in § 1.78(a)(5)(i) and (iii) (*i.e.,* by an amendment in the first sentence of the specification or in an application data sheet) to have a proper claim under 35 U.S.C. 119(e) and § 1.78 to the benefit of a prior-filed provisional application. If, however, an applicant includes such a claim elsewhere in the application and not in the manner specified in § 1.78(a)(5)(i) and (iii), and the claim is not recognized by the Office as shown by its absence on a filing receipt (*e.g.,* if the claim is in a part of the application where priority or continuity claims are not conventionally located, such as the body of the specification), the Office will require a petition (and the surcharge under § 1.17(t)) to correct such claim. This is because the application will not have been scheduled for publication on the basis of the information concerning the claim contained elsewhere in the application.

Section 1.311: Section 1.311(a) is amended to correct the parenthetical reference to ''(§ 1.211(f))'' to ''(§ 1.211(e)).''

Section 1.434: Section 1.434(d)(2) is amended by deleting the term ''copending,'' as the prior national application may be a provisional application and 35 U.S.C. 119(e) no longer requires copendency for a nonprovisional application to claim the benefit of the filing date of a provisional application under 35 U.S.C. 119(e).

Section 1.491: The Office proposed amending § 1.491 such that the regulations set forth the current language of 35 U.S.C. 371(b) that defines when national stage commencement occurs. The Office will adopt that proposed change to § 1.491 in a separate final rule that implements an amendment to PCT Article 22.

Response to Comments

The Office published a notice proposing the above-mentioned changes to the rules of practice. *See Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications,* 66 FR 46409 (Sept. 5, 2001), 1251 *Off. Gaz. Pat. Office* 16 (Oct. 2, 2001) (notice of proposed rulemaking). The Office received seven written comments (from intellectual property organizations, patent practitioners, and the general public) in response to the notice of proposed rulemaking. The comments are available for public inspection at the Office of the Commissioner for Patents, located in Crystal Park 2, Suite 910, 2121 Crystal Drive, Arlington, Virginia, and are also posted on the Office's Internet Web site (address: *http://www.uspto.gov*).

Most of the comments expressed support for the proposed changes. None of the comments opposed the proposed changes, but several comments included additional suggestions. Those comments and the Office's responses follow (comments that generally support the proposed changes are not discussed):

Comment 1: Several comments suggested that the Office make clear that the time period requirements in § 1.78(a)(2)(ii) and § 1.78(a)(5)(ii) (and resulting waiver if these time period requirements are not met) do not apply to applications filed before November 29, 2000. Another comment suggested that the change to § 1.78 be made retroactive to all applications filed on or after November 29, 2000.

Response: Sections 1.55 and 1.78 are now amended to expressly state that the time period requirements of § 1.55(a)(1)(i), § 1.78(a)(2)(ii) and § 1.78(a)(5)(ii) do not apply to applications filed before November 29, 2000. Therefore, there is no waiver of a benefit under 35 U.S.C. 119 or 120 for failure to comply with the time period requirements of § 1.55(a)(1)(i), § 1.78(a)(2)(ii) or § 1.78(a)(5)(ii) in an application filed before November 29, 2000.

Except where the terms of § 1.55 and § 1.78 indicate that a provision of § 1.55 or § 1.78 applies only to applications filed on or after November 29, 2000 (*i.e.,* § 1.55(a)(1)(i), § 1.78(a)(2)(ii), and § 1.78(a)(5)(2)(ii)), the provisions of § 1.55 and § 1.78 as now amended are applicable to applications filed before, on, or after November 29, 2000. For example, both the elimination of the requirement that if the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English (§ 1.78(a)(2)), and the more liberal time period and provisions for filing an English language translation of a non-English language provisional application (§ 1.78(a)(5)), apply to applications filed before, on, or after November 29, 2000. Sections 1.55 and 1.78 as now amended, however, provide that the time period requirements of § 1.55(a)(1)(i), § 1.78(a)(2)(ii) and § 1.78(a)(5)(ii) do not apply to applications filed before November 29, 2000.

Comment 2: Several comments suggested that § 1.78 be amended to state that, if an applicant includes a claim under § 1.78 to the benefit of a prior-filed application elsewhere in the application, but not in the manner specified in § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii), within the time period set forth in § 1.78(a)(2)(ii) or § 1.78(a)(5)(ii), respectively, the Office will not require a petition (and the surcharge under § 1.17(t)) to correct the claim if the information concerning the claim contained elsewhere in the application was recognized by the Office as shown by its inclusion on a filing receipt or in the patent application publication.

Response: The Office has adopted the following practice: if an applicant includes a claim under § 1.78 to the benefit of a prior-filed application elsewhere in the application, but not in the manner specified in § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii), within the time period set forth in § 1.78(a)(2)(ii) or § 1.78(a)(5)(ii), respectively, the Office will not require a petition (and the surcharge under § 1.17(t)) to correct the claim if the information concerning the claim contained elsewhere in the application was recognized by the Office as shown by its inclusion on a filing receipt (not as shown by its inclusion in the patent application publication). The reason for this practice is to avoid the situation in which an applicant is required to file a petition (and pay the surcharge under § 1.17(t)) even though the application was scheduled for publication on the basis of the information concerning the claim contained elsewhere in the application, but not in the manner specified in § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii), within the time period set forth in § 1.78(a)(2)(ii). That is, whether an applicant is required to file a petition (and pay the surcharge under § 1.17(t)) to correct a claim that does not comply with § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii) is based upon the effect the informal claim has on the scheduling of the application for publication, and not whether the informal claim is ultimately included in the patent application publication.

The Office's goal is to encourage applicants to provide claims to the benefit of any prior-filed application in the manner specified in § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii) within the time period set forth in § 1.78(a)(2)(ii) or § 1.78(a)(5)(ii). Amending § 1.78 itself to expressly include the above-stated practice would give tacit approval to providing claim to the benefit of a prior-filed application in a manner that does not comply with § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii). The commentors' proposed amendment to § 1.78 would have an effect contrary to the Office's goal of encouraging applicants to provide claims to the benefit of any prior-filed application in the manner specified in § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii) within the time period set forth in § 1.78(a)(2)(ii) or § 1.78(a)(5)(ii).

Finally, if a claim under § 1.78 does not comply with § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii) (but is stated elsewhere in the application), such claim must eventually be presented in the manner specified in § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii) (*i.e.,* by an amendment in the first sentence of the specification or in an application data sheet) to be a proper claim under 35 U.S.C. 119(e) or 120 and § 1.78 to the benefit of a prior-filed application.

Comment 3: Several comments suggested that the Office should make it clear that if the requirements of § 1.78(a)(2)(ii) have been met, the applicant has not waived priority or continuity benefits even if the priority or continuity claim is not included in the patent application publication.

Response: If a claim under § 1.78 to the benefit of a prior-filed application is stated in the manner specified in § 1.78(a)(2)(i) and (iii) or § 1.78(a)(5)(i) and (iii) within the time period set forth in § 1.78(a)(2)(ii) or § 1.78(a)(5)(ii), the applicant has not waived the claim regardless of whether the Office includes the claim in the patent application publication. Nothing in § 1.78 suggests that the propriety of claim under § 1.78 is dependent upon its inclusion in the patent application publication.

Comment 4: Several comments suggested that the Office should provide applicants with the greatest possible flexibility in satisfying priority claim requirements, and should avoid adding technical requirements that may result in a loss of patent rights. The comments specifically suggested that since Office employees are familiar with checking the declaration for priority claims, § 1.78(a)(2)(iii) should be further amended to allow the reference required by § 1.78(a)(2)(i) to be included in the declaration.

Response: The Office allows applicants to provide claims under § 1.78 to the benefit of any prior-filed application either in the first line of the specification (where § 1.78 formerly required such a claim to be) or in an application data sheet (§ 1.76). Providing even this level of flexibility hinders the patent application publication and patent printing process when the specification and application data sheet (§ 1.76) contain conflicting information. Providing the oath or declaration under § 1.63 as an additional possible location for claims under § 1.78 to the benefit of any prior-filed application would result in confusion in situations in which: (1) the applicant has submitted multiple oaths or declarations under § 1.63; or (2) information submitted in the oath or declaration conflicts with information submitted in the specification or the application data sheet (§ 1.76). Providing the oath or declaration under § 1.63 as an additional possible location for claims to the benefit of any prior-

filed application would also cause problems in the situation in which it is desirable to delete a claim to the benefit of a prior-filed application (for patent term purposes), in that a substitute oath or declaration not containing the claim would be necessary to eliminate a claim if such claim is made by a statement in the oath or declaration (§ 1.63).

Comment 5: Several comments suggested that the Office should take all steps necessary to ensure that all proper priority or benefit claims are included in the first paragraph of the patent application publication.

Response: The applicant and application information (*i.e.,* inventor names, including order, title, priority/benefit, assignee name) that is in the Office's Patent Application Locating and Monitoring (PALM) system at the time the application content is extracted from the Office's Patent Application Capture and Review (PACR) database for publication will be reflected on the front page of the patent application publication. Thus, if an application is filed without any priority or benefit claim, but a priority or benefit claim is subsequently submitted before the application content has been extracted for publication, the priority or benefit claim will be reflected on the front page of the patent application publication. The application content is currently extracted for publication approximately nine weeks before the projected publication date. The time period in § 1.55(a)(1), § 1.78(a)(2)(ii), and § 1.78(a)(5)(ii) for submitting a priority or continuity claim is four months from the actual filing date of the application or sixteen months from the filing date of the prior-filed application, which does not appear to expire until after the time at which application content is extracted for publication. As a practical matter, however, this time period will expire before the time at which application content is extracted for publication (and, as such, any timely priority or continuity claim should be entered into the Office's PALM system before the time at which application content is extracted for publication) because the failure to state a priority or continuity claim before a publication date is originally calculated will result in projected publication date that is later than the projected publication date would have been if such priority or continuity claim were taken into account.

If an untimely claim under § 1.78 to the benefit of a prior-filed application is accepted under § 1.78(a)(3) or § 1.78(a)(6) after the application content has been extracted for publication purposes, the Office plans to correct its electronic records relating to the patent application publication such that the claim under § 1.78 will be reflected on the Office's electronic records of the patent application publication (the eighteen-month publication process does not involve the creation of paper-based records).

Finally, while priority and continuity claims will be reflected on the front page of the patent application publication, continuity claims under § 1.78 will not additionally be stated on the first line of the specification unless the claim is included in the first line of the specification as originally filed or as filed in a copy of the application submitted by the Office electronic filing system under § 1.215(c). Specifically, claims under § 1.78 will not additionally be stated on the first line of the specification if the claim is included in a preliminary amendment to the specification (*see* § 1.215(c) (the patent application publication will not include any amendments, including preliminary amendments, unless applicant supplies a copy of the application containing the amendment pursuant to § 1.215(c))) or in an application data sheet (*cf. Changes to Implement the Patent Business Goals,* 65 FR 78958, 78959 (Dec. 18, 2000), 1242 *Off. Gaz. Pat. Office* 65 (Jan. 9, 2001) (final rule and correction) (''If continuity data is included in an application data sheet, but not in the first sentence of the specification, the continuity data to be set forth in the application data sheet will not be printed in the first line of the specification in the patent'')).

Comment 6: One comment questioned whether there is any mechanism for correcting the absence of a priority claim in an international application if an applicant files the international application designating the United States of America, but subsequently files a continuation application that claims the benefit of the international application and the international application never enters the national stage under 35 U.S.C. 371.

Response: The requirement that a claim to the benefit of a prior-filed provisional application, a prior-filed nonprovisional application, or a prior-filed international application designating the United States be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application does not apply to an international application that never entered the national stage under 35 U.S.C. 371. Therefore, to amend the later-filed international application to add a claim to the benefit of a prior-filed provisional application, a prior-filed nonprovisional application, or a prior-filed international application designating the United States, the applicant need only file a petition under § 1.182 to amend an abandoned application (the later-filed international application) with the claim to the benefit of a prior-filed application (regardless of whether the later-filed international application was filed in the United States Receiving Office).

Comment 7: Several comments supported the proposed change by which the Office would issue a notice in a nonprovisional application claiming the benefit of a non-English language provisional application that sets a time period within which the English translation must be filed, but noted that if the Office fails to issue such a notice and the applicant does not provide such a translation before publication, the burden will fall on applicants against whom the resulting patent application publication is cited as a reference to obtain a translation of the provisional application.

Response: The Office plans to check during the preexamination processing of a nonprovisional application to determine whether the nonprovisional application claims the benefit of a provisional application that was filed in a language other than English and, if so, whether an English-language translation of the provisional application was filed in the provisional application. If the nonprovisional application claims the benefit of a provisional application that was filed in a language other than English and no English-language translation of the provisional application was filed in the provisional application, the Office will issue a notice requiring the applicant to timely file an English-language translation and a statement that the translation is accurate. If the Office schedules an application that claims the benefit of a provisional application filed in a language other than English for publication without issuing a notice requiring the applicant to file an English-language translation of the non-English-language provisional application, the applicant should file the English-language translation of the non-English-language provisional application and a statement that the translation is accurate before the scheduled publication date.

The situation in which a patent application publication results from a nonprovisional application that claims the benefit of a provisional application that was filed in a language other than

English, and no English-language translation of the provisional application was filed in either the provisional application or the nonprovisional application, will not occur unless: (1) The Office fails to issue a notice during the preexamination processing of the nonprovisional application requiring the applicant to timely file an English-language translation of the provisional application; and (2) the applicant fails to provide the English-language translation of the non-English-language provisional application before the publication date of the patent application publication. Once this situation comes to the Office's attention, § 1.78(a)(5)(iv) as now amended provides that the Office may issue a notice requiring the applicant (in the nonprovisional application that resulted in the patent application publication) to provide an English-language translation of the non-English-language provisional application and a statement that the translation is accurate (the Office may also simply obtain its own English-language translation of the non-English-language provisional application if that appears to be the most convenient course of action). Failure to timely provide an English-language translation of the non-English-language provisional application and a statement that the translation is accurate in reply to such a notice will result in abandonment in a pending nonprovisional application, and may jeopardize the claim to the benefit of the provisional application in any situation (since the requirements of § 1.78(a)(5) have not been complied with).

Comment 8: One comment questioned whether a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371 must include a reference under § 1.78 to the underlying international application.

Response: A reference under § 1.78 to the underlying international application is neither necessary nor appropriate in a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371. *See Manual of Patent Examining Procedure* § 1893.03(c) (8th ed. 2001) (a national stage application filed under 35 U.S.C. 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application).

Comment 9: One comment suggested that the surcharge for the unintentionally delayed submission of a priority claim was excessive.

Response: As indicated in the final rule to implement eighteen-month publication, this surcharge amount must be sufficient to provide an incentive for applicant to exercise care to ensure that any desired claim under 35 U.S.C. 119, 120, 121, or 365(a) or (c) is timely presented. As such, the surcharge amount tracks the fee amount for a petition to revive an unintentionally abandoned application (35 U.S.C. 41(a)(7)). *See Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57040, 1239 Off. Gaz. Pat. Office at 77 (comment 8 and response).

Comment 10: One comment noted that a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371 has already been published as an international application.

Response: As indicated in the final rule to implement eighteen-month publication, the International Bureau publication of an international application will not be included in the Office's patent application publication search database. The Office must (re)publish international applications that entered the national stage to place these applications into its patent application publication search database. The benefit gained by ensuring that these prior art documents will be included in the Office's patent application publication search database outweighs the cost of (re)publishing these applications. *See Changes to Implement Eighteen-Month Publication of Patent Applications,* 65 FR at 57045, 1239 *Off. Gaz. Pat. Office* at 82 (comment 47 and response).

Classification

Administrative Procedure Act

The changes in this final rule concern only the procedures for filing claims for the benefit of a prior-filed application under 35 U.S.C. 119(e) or 120, the procedures for filing an English language translation of a non-English language provisional application, and technical corrections to the provisions of §§ 1.78, 1.311, and 1.434. Because all of the changes relate to Office practices and procedures, prior notice and an opportunity for public comment was not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). However, because the Office desired the benefit of public comment on this topic, the Office voluntarily accepted comments pursuant to a published notice proposing the above-mentioned changes.

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, the regulatory flexibility analysis is not required, and none has been provided. *See* 5 U.S.C. 603.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This final rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this final rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0021, 0651–0031, 0651–0032, and 0651–0033.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101,ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328.

Type of Review: Regular submission (approved through December of 2003).

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.

Estimated Number of Respondents: 331,288.

Estimated Time Per Response: Between 15 minutes and 4 hours.

Estimated Total Annual Burden Hours: 401,083.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the

filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08/21–27/30–32/35–37/42/43/61/62/63/64/67/68/91/92/ 96/97/PTO–2053/PTO–2055.

Type of Review: Regular submission (approved through October of 2002).

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 2,247,389.

Estimated Time Per Response: 0.45 hours.

Estimated Total Annual Burden Hours: 1,021,941 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments; Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07/13PCT/17–19/29/101–110.

Type of Review: Regular submission (approved through October of 2002).

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 319,350.

Estimated Time Per Response: 9.35 hours.

Estimated Total Annual Burden Hours: 2,984,360 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in the processing and examination of the application.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.

Type of Review: Regular submission (approved through September of 2000).

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 135,250.

Estimated Time Per Response: 0.325 hour.

Estimated Total Annual Burden Hours: 43,893 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.14 is amended by revising paragraph (i)(2) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(i) * * *

(2) A copy of an English language translation of an international application which has been filed in the United States Patent and Trademark Office pursuant to 35 U.S.C. 154(d)(4) will be furnished upon written request including a showing that the publication of the application in accordance with PCT Article 21(2) has occurred and that the U.S. was designated, and upon payment of the appropriate fee (§ 1.19(b)(2) or § 1.19(b)(3)).

* * * * *

3. Section 1.55 is amended by revising paragraphs (a)(1)(i) and (c) to read as follows:

§ 1.55 Claim for foreign priority.

(a) * * *

(1)(i) In an original application filed under 35 U.S.C. 111(a), the claim for priority must be presented during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. This time period is not extendable. The claim must identify the foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. The time periods in this paragraph do not apply in an application under 35 U.S.C. 111(a) if the application is:

(A) A design application; or

(B) An application filed before November 29, 2000.

* * * * *

(c) Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) not presented within the time period provided by paragraph (a) of this section is considered to have been waived. If a claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) is presented after the time period provided by paragraph (a) of this section, the claim may be accepted if the claim identifying the prior foreign application by specifying its application number, country (or intellectual property authority), and the day, month, and year of its filing was unintentionally delayed. A petition to accept a delayed claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) must be accompanied by:

(1) The claim under 35 U.S.C. 119(a)–(d) or 365(a) and this section to the prior

foreign application, unless previously submitted;

(2) The surcharge set forth in § 1.17(t); and

(3) A statement that the entire delay between the date the claim was due under paragraph (a)(1) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

4. Section 1.78 is amended by revising paragraph (a) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a)(1) A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed application must be:

(i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America; or

(ii) Complete as set forth in § 1.51(b); or

(iii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee set forth in § 1.16; or

(iv) Entitled to a filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(f).

(2)(i) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(i) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application for a design patent;

(B) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(C) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence following the title.

(iv) The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior-filed application. The identification of an application by application number under this section is the identification of every application assigned that application number necessary for a specific reference required by 35 U.S.C. 120 to every such application assigned that application number.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

(4) A nonprovisional application, other than for a design patent, or an international application designating the United States of America may claim an invention disclosed in one or more prior-filed provisional applications. In order for an application to claim the benefit of one or more prior-filed provisional applications, each prior-filed provisional application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(k) must be paid within the time period set forth in § 1.53(g).

(5)(i) Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications must contain or be amended to contain a reference to each such prior-filed provisional application, identifying it by the provisional application number (consisting of series code and serial number).

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four

months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed provisional application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed provisional application. These time periods are not extendable. Except as provided in paragraph (a)(6) of this section, the failure to timely submit the reference is considered a waiver of any benefit under 35 U.S.C. 119(e) to such prior-filed provisional application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or

(B) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence following the title.

(iv) If the prior-filed provisional application was filed in a language other than English and an English-language translation of the prior-filed provisional application and a statement that the translation is accurate were not previously filed in the prior-filed provisional application or the later-filed nonprovisional application, applicant will be notified and given a period of time within which to file an English-language translation of the non-English-language prior-filed provisional application and a statement that the translation is accurate. In a pending nonprovisional application, failure to timely reply to such a notice will result in abandonment of the application.

(6) If the reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(5)(ii) of this section, the claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application may be accepted during the pendency of the later-filed application if the reference identifying the prior-filed application by provisional application number was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application must be accompanied by:

(i) The reference required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section to the prior-filed provisional application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(5)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

* * * * *

5. Section 1.311 is amended by revising paragraph (a) to read as follows:

§ 1.311 Notice of allowance.

(a) If, on examination, it appears that the applicant is entitled to a patent under the law, a notice of allowance will be sent to the applicant at the correspondence address indicated in § 1.33. The notice of allowance shall specify a sum constituting the issue fee which must be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. The sum specified in the notice of allowance may also include the publication fee, in which case the issue fee and publication fee (§ 1.211(e)) must both be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable.

* * * * *

6. Section 1.434 is amended by revising paragraph (d)(2) to read as follows:

§ 1.434 The request.

* * * * *

(d) * * *

(2) A reference to any prior-filed national application or international application designating the United States of America, if the benefit of the filing date for the prior-filed application is to be claimed.

Dated: December 19, 2001.

James. E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 01–31872 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AZ, CA, HI, NV–066–MSWa; FRL–7122–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Negative Declarations; Municipal Waste Combustion; Arizona; California; Hawaii; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the receipt of negative declarations from Arizona, California, Hawaii, and Nevada. These negative declarations certify that there are no small municipal waste combustion units in these States that would be subject to the control requirements of the federal emission guidelines.

DATES: This direct final rule is effective on February 26, 2002 without further notice, unless EPA receives relevant adverse comments by January 28, 2002. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the letters of negative declaration are available for public inspection at EPA's Region IX office during normal business hours. U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Mae Wang, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street (AIR–4), San Francisco, CA 94105–3901, Telephone: (415) 947–4124.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (CAA), EPA has established procedures whereby States submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111 but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the CAA) or hazardous air pollutants (HAPs) regulated under section 112 of the CAA. As required by CAA section 111(d), EPA established a

process at 40 CFR Part 60, Subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates new source performance standards (NSPS) that control a designated pollutant, EPA establishes emission guidelines (EG) applicable to existing sources in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B (40 CFR 60.23 through 60.26).

On December 6, 2000, EPA promulgated EG for existing small municipal waste combustion units (MWCs) at 40 CFR part 60, Subpart BBBB, (Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999) (see 65 FR 76378). States are required to submit either a plan to implement and enforce the EG or, if there are no existing small MWCs subject to the EG in the State, a negative declaration letter. A negative declaration letter is a letter from a State authority certifying that there are no designated facilities (MWC units with a capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste) in that State. The negative declaration letter is submitted in lieu of a State plan.

II. EPA Action

The States of Arizona, California, Hawaii, and Nevada have each submitted negative declaration letters certifying that there are no existing small MWCs that are subject to the control requirements of the emission guidelines within their State. The dates that these letters were submitted are identified in the table below.

State agency that submitted the negative declaration	Date of letter to EPA
Arizona Department of Environmental Quality.	March 15, 2001.
California Environmental Protection Agency, Air Resources Board.	July 20, 2001.
State of Hawaii, Department of Health.	March 13, 2001.
State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection.	March 26, 1997.

EPA is amending part 62 to reflect the receipt of negative declaration letters from these States. Amendments are being made to 40 CFR part 62, subparts D (Arizona), F (California), M (Hawaii), and DD (Nevada).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State negative declarations as meeting federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves State negative declarations and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves negative declarations submitted by States, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State plan submissions, our role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), we have no authority to disapprove State submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews State submissions, to use VCS in place of State submissions that otherwise satisfy the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 6, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

Title 40, chapter I, part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Subpart D is amended by adding an undesignated center heading and § 62.640 to read as follows:

Emissions From Small Existing Municipal Waste Combustion Units

§ 62.640 Identification of plan—negative declaration.

Letter from the Arizona Department of Environmental Quality, submitted on March 15, 2001, certifying that there are no small municipal waste combustion units subject to part 60, subpart BBBB, of this chapter.

Subpart F—California

3. Subpart F is amended by adding an undesignated center heading and § 62.1125 to read as follows:

Emissions From Small Existing Municipal Waste Combustion Units

§ 62.1125 Identification of plan—negative declaration.

Letter from the California Air Resources Board, submitted on July 20, 2001, certifying that there are no small municipal waste combustion units subject to part 60, subpart BBBB, of this chapter.

4. Part 62 is amended by adding Subpart M to read as follows:

Subpart M—Hawaii

Emissions From Small Existing Municipal Waste Combustion Units

§ 62.2850 Identification of plan—negative declaration.

Letter from the State of Hawaii Department of Health, submitted on March 13, 2001, certifying that there are no small municipal waste combustion units subject to part 60, subpart BBBB, of this chapter.

Subpart DD—Nevada

5. Subpart DD is amended by adding an undesignated center heading and § 62.7125 to read as follows:

Emissions From Small Existing Municipal Waste Combustion Units

§ 62.7125 Identification of plan—negative declaration.

Letter from the Nevada Division of Environmental Protection, submitted on March 26, 1997, certifying that there are no existing municipal waste combustion units subject to part 60, subpart BBBB, of this chapter.

[FR Doc. 01–31943 Filed 12–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7122–5]

RIN 2060–AG76

Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With today's action EPA is finalizing certain proposed modifications to the reformulated gasoline (RFG) and conventional gasoline regulations. Through the 1990 amendments to the Clean Air Act (CAA), Congress directed EPA to publish rules requiring that gasoline sold in certain areas be reformulated to reduce vehicle emissions of toxic and ozone-forming compounds. Congress also directed EPA to establish rules setting anti-dumping standards for non-reformulated, or ''conventional'' gasoline. EPA published rules for the certification and enforcement of RFG and provisions for conventional gasoline on February 16, 1994 at 59 FR 7716.

Based on experience gained since the promulgation of these regulations, on July 11, 1997, we proposed a variety of revisions to the regulations relating to emissions standards, emissions models, compliance-related requirements and enforcement provisions. In a final rule published on December 31, 1997, we took final action on several of the proposed revisions. Today's action finalizes certain other of the proposed revisions.

The revisions in this final rule involve both RFG and conventional gasoline. This rule finalizes procedures for combining finished gasoline with other products to produce new blends of gasoline. These procedures allow refiners to use conventional gasoline to produce RFG, and to reclassify RFG with regard to VOC classification, activities which were previously prohibited under the regulations. This rule also identifies procedures and requirements regarding the change of service of gasoline storage tanks. The emissions benefits achieved from the RFG and conventional gasoline programs will not be reduced as a result of this final rule.

On May 17, 2001 the National Energy Policy Development Group (NEPD) recommended that EPA ''study opportunities to maintain or improve the environmental benefits of state and local 'boutique' clean fuel programs while exploring ways to increase the flexibility of the fuels distribution infrastructure, improve fungibility, and provide added market liquidity.'' In response to the NEPD charge, EPA included in its boutique fuel report a series of regulatory actions, including today's action regarding the use of finished gasoline to produce new blends of gasoline, intended to better facilitate seasonal gasoline transition and address gasoline supply and fungibility concerns during periods of low gasoline inventories. We are able to finalize this action now, in advance of other intended EPA actions, because it was previously proposed by EPA. We expect the flexibilities provided via today's action will promote improved availability of fuel meeting the range of environmental and market needs. Action on the other boutique fuel regulatory recommendations targeted at facilitating the transition from winter to summer fuel should be completed in advance of next year's ozone season.

DATES: This rule is effective on December 28, 2001.

ADDRESSES: Materials relevant to this FRM are contained in Public Docket No. A–97–03, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, S.W., Washington, D.C. 20460. Materials relevant to the final rule establishing standards for RFG and anti-dumping standards for conventional gasoline are contained in Public Dockets—A–92–01 and A–92–12, and are incorporated by reference.

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, Transportation and Regional Programs Division, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W. (6406J), Washington, D.C. 20460; telephone: (202) 564–8989; FAX (202) 565–2085; e-mail *mbennett@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include those involved with the production and importation of gasoline motor fuel.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICSs codes [a]	SIC codes [b]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's notice is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of the preamble, regulatory language and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality (OTAQ) Web site listed below shortly after the fuel is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web Site: *http://www.epa.gov/docs/fedrgstr/epa-air/*

(Either select desired date or use Search feature)

OTAQ Web Site: *http://www.epa.gov/otaq/*

(Look in ''What's New'' or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Outline of This Preamble

I. Previously Certified Gasoline

Under 40 CFR 80.65(i) and 80.101(e)(1), refiners are required to exclude from a refinery's compliance calculations gasoline that was not produced at that refinery, and gasoline that was produced at that refinery but was included in the refinery's compliance calculations as part of another gasoline batch. Such gasoline is called ''previously certified gasoline,'' or ''PCG.'' PCG is required to be excluded from compliance calculations to avoid double counting of the gasoline, since PCG is gasoline that was previously accounted for in the refiner's or another refiner's compliance calculations.[1]

Where PCG is combined with blendstock to produce a new blend of gasoline, the blendstock must be included in the refinery's compliance calculations, and the PCG must be excluded. The regulations at § 80.101(g)(3) provide a method for calculating the emissions performance of a blendstock which may be used for purposes of including in compliance calculations a blendstock that is blended with PCG. However, this method only applies to previously certified conventional gasoline that is combined with blendstock to produce a new blend of conventional gasoline. The regulations prior to today's rule did not include provisions for using previously certified conventional gasoline to produce RFG, or previously certified RFG to produce new blends of gasoline.

In the Notice of Proposed Rulemaking (NPRM) issued July 11, 1997, we proposed procedures for excluding PCG from compliance calculations which allow previously certified conventional gasoline or previously certified RFG to be used to produce new blends of gasoline, including RFG. Today's rule finalizes these PCG procedures. The provisions at § 80.101(g)(3) for calculating the emissions performance of a blendstock continue to be available. Under certain circumstances, for example, where a refiner includes oxygenate blended at a downstream terminal in the refinery's anti-dumping compliance calculations, the provisions at § 80.101(g)(3) may provide the most appropriate method for excluding PCG from compliance calculations. See 62 FR 37364 (July 11, 1997), and 62 FR 68196 (December 31, 1997), for further discussion of the provisions at § 80.101(g)(3).

Where the PCG procedures finalized in today's rule are followed, refiners may reclassify conventional gasoline as RFG (or reformulated gasoline blendstock for oxygenate blending—''RBOB''), or reclassify RFG with regard to VOC control. Prior to today's final rule, the regulations allowed previously certified RFG to be reclassified as conventional gasoline for use in non-RFG areas; however, they prohibited refiners from combining RFG that is used in RFG areas with conventional gasoline, or combining RFG of different VOC designations. See § 80.78. These prohibitions had the effect of prohibiting refiners from upgrading conventional gasoline to RFG, or reclassifying RFG with regard to its VOC control category.

At the time the RFG regulations were promulgated, EPA was concerned that the overall quality of the various gasoline pools may be degraded if refiners were able to reclassify conventional gasoline as RFG or reclassify one category of RFG as another category of RFG. For example, a refiner could produce very ''clean'' conventional gasoline and include it in its anti-dumping compliance calculations, and then reclassify it as RFG with little or no additional blending, thus enabling the refiner to meet the anti-dumping standards using gasoline that, in fact, is used as RFG. This type of activity could result in a degradation of the quality of the conventional gasoline pool, with associated adverse environmental effects. However, the PCG procedures finalized in today's rule include requirements and limitations which allow conventional gasoline to be reclassified as RFG, and RFG to be reclassified with regard to VOC control, without the potential for adverse environmental effects. As a result, today's final rule revises the prohibitions in § 80.78 to allow parties to combine RFG (or RBOB) with conventional gasoline or blendstock if the PCG procedures are followed.

Under the PCG procedures finalized today, reclassifications using PCG may occur only at refineries, including terminal blending facilities registered as refineries. Refiners are required to determine the volume and properties of each batch of PCG used in the refinery operation along with the designation of the gasoline (RFG, RBOB or conventional), and, for RFG or RBOB, the designation relating to VOC control. The volume and properties of each batch of PCG must be reported to EPA as a negative batch under the same designation as the gasoline as it was received or produced by the refinery. The PCG then may be used by the

[1] The regulations at 40 CFR 80.2(d) define previously certified gasoline as ''gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards for reformulated gasoline, conventional gasoline or gasoline sulfur, as appropriate.''

refiner as another blendstock, and the gasoline produced using the PCG is sampled and tested and included in compliance calculations without regard to the PCG content. The gasoline produced using the PCG will not necessarily have the same designation as the original PCG batch. As a result, these procedures allow conventional gasoline to be upgraded to RFG, non-VOC controlled RFG to be reclassified as VOC controlled RFG, and RFG VOC Region 2 gasoline to be reclassified as RFG VOC Region 1 gasoline. Where previously certified RFG is blended with other components to produce conventional gasoline, the refiner must reclassify the RFG as conventional gasoline and follow the procedures for using previously certified conventional gasoline to produce new conventional gasoline.

RFG standards may be met on an annual average basis or on a per-gallon basis. When using PCG, these two situations are handled somewhat differently, as follows:

(1) Where standards are met on average at a refinery, a refiner who uses PCG must meet each average standard based on the net average properties of gasoline in the relevant averaging pool, consisting of the positive volume and properties of all gasoline produced in that averaging pool and the negative volume and properties of all PCG in that averaging pool. Each averaging pool is required to have a net ''positive'' gasoline volume.

(2) Where a refiner has elected to meet a parameter or emissions performance standard on a per-gallon basis, and a batch of RFG or RBOB is produced using previously certified RFG, for this batch the refiner must meet the more stringent of: (1) The per-gallon standard that applies to the refinery under § 80.41; or (2) the actual value for that parameter or emissions performance measure for the previously certified RFG used to produce the batch. Where previously certified conventional gasoline is used to produce a batch of RFG or RBOB, the gasoline produced must meet the per-gallon RFG standards under § 80.41.

Under the PCG procedures, any gasoline claimed as PCG must actually be used in a refinery's operation. This is to ensure that the PCG procedures will not cause a degradation in gasoline quality. For example, if a refinery receives a batch of ''dirty'' conventional gasoline and classifies it as PCG, but never uses it as a component for gasoline production, the PCG would be included as a negative batch in the refinery's compliance calculations and the refinery's conventional gasoline pool would appear ''cleaner'' than it actually is.

The following table summarizes the PCG approach:

Type of previously certified gasoline (PCG)	Type of gasoline produced	Compliance with standards when using PCG	
		Per-gallon	Average
RFG or RBOB	RFG or RBOB	New batch must meet the more stringent of: § 80.41 per gallon standards; or PCG properties.	Include PCG in RFG compliance calculations as negative batch; include new batch in RFG compliance calculations. All RFG pool volumes for standards must be positive.
Conventional gasoline (CG)	RFG or RBOB	New batch must meet § 80.41 per gallon standards.	Include PCG in CG compliance calculations as negative batch; include new batch in RFG compliance calculations. CG pool volume must be positive.
CG (or RFG) [1]	CG	None	Include PCG in CG compliance calculations as a negative batch; include new batch in CG compliance calculations. CG pool volume must be positive.

[1] Includes RFG used to produce CG, because previously certified RFG may be reclassified (''downgraded'') as previously certified CG.

We received a number of favorable comments on the proposal regarding PCG. One commenter, however, said that requiring the net volume of gasoline in a refinery's anti-dumping compliance calculations to be positive creates an inconsistency with those parties who have elected to aggregate refineries for purposes of complying with the anti-dumping standards. We agree with the commenter, and today's final rule modifies the proposed regulatory language to clarify that for refiners who have elected to aggregate their refineries for anti-dumping compliance, the requirement for the net volume of gasoline to be positive applies to the anti-dumping compliance calculations of the refiner's aggregation.

Another commenter suggested that EPA clarify that tank heels do not have to be included in the volume accounted for as a negative batch, assuming that proper change of tank service procedures are followed. In the NPRM, we proposed procedures relating to the change of service of gasoline storage tanks. These procedures are also finalized by today's rule. See § 80.78(a)(10), and Section II of this preamble for a discussion of these procedures. Under these procedures, tank heels are allowed to remain in a tank and may be mixed with products that normally are required to be segregated in a situation where a party is changing the service of a gasoline storage tank. The allowances under these provisions are limited specifically to circumstances where the change of service is for a legitimate operational reason and is not for the purpose of combining categories of gasoline that otherwise must be segregated, or for the purpose of combining gasoline with blendstock. Accordingly, these provisions include specific change-of-service requirements, one of which is that the volume of product in the tank must be made as low as possible through normal pumping operations before adding product of a new category. Where all of the requirements of § 80.78(a)(10) are met, a refiner is not required to account for the volume of a PCG tank heel.

Where gasoline is produced at a refinery in a blending tank, a tank heel of PCG must be tested and included in the refinery's compliance calculations as a negative batch in the appropriate category for the PCG. However, if the refiner has test results from the prior batch which included the volume of the heel, and no other PCG product is added to the tank, the test results from the prior batch may be used to fulfill the testing requirements for the PCG heel. In situations where other PCG product in addition to the PCG heel may be present in the blending tank, the entire volume of PCG, including the heel, must be

tested and included in the refinery's compliance calculations as a negative batch.

One commenter said that the proposed treatment is appropriate for conventional gasoline that is upgraded at the same refinery where it was originally certified, but not for conventional gasoline that was produced at another refinery. In the latter case, the inclusion of a negative batch in the anti-dumping calculations has the effect of removing a batch of gasoline that was never included in the refiner's pool in the first instance. Where conventional gasoline certified at another refinery is upgraded to RFG or RBOB, the commenter suggested that the negative batch should be applied to the RFG calculations, leaving only the blendstocks combined with it in that refinery's RFG compliance calculations. The commenter said that the proposal as written would make it difficult for refineries that produce close to 100% RFG to upgrade PCG and/or blendstocks from other refineries to RFG, since they may not produce sufficient volumes of conventional gasoline to offset the negative batches. This commenter also suggested that the source of the conventional gasoline (same refinery vs. different refinery) be acknowledged in the negative batch data, which, the commenter believes would preserve the flexibility for all refiners while eliminating the ''gaming'' that concerns EPA.

As discussed above, the original prohibitions against reclassifying certain products were included in the RFG rule because of a concern that the overall quality of the gasoline pools could be degraded if refiners were able to reclassify conventional gasoline to RFG, or to reclassify certain categories of RFG into other categories of RFG. Therefore, to prevent a degradation of the overall quality of a gasoline pool, we believe that PCG used to produce gasoline of a different category should be included as a negative batch in the refinery's compliance calculations for the category originally designated for the PCG. Although requiring the source of the PCG to be included in the negative batch data may serve to deter persons from using PCG for purposes of ''gaming,'' as the commenter suggested, we believe this alone would not address the problem of degradation of the overall gasoline pool. Unless a refiner is required to include all PCG in compliance calculations as a negative batch, there may be the potential for negative environmental consequences. Moreover, we believe that it would be unreasonable and impractical to require a refiner who sells gasoline that is later used as PCG by another refiner to adjust its compliance calculations to reflect the other refiner's use of the PCG. As a result, we believe that the most appropriate approach is to require the refiner who uses the PCG to produce gasoline of a different category to include the PCG as a negative batch in the refinery's compliance calculations.

We understand that there may be situations where a refiner is unable to avail itself of the flexibility provided by the PCG provisions because of the limitations on this approach, particularly those refiners who wish to upgrade PCG but who produce little or no gasoline of the same category as the PCG to offset the PCG batches. We are interested in extending the flexibility afforded by today's rule to such refiners if it is possible to devise practical and effective procedures for extending this flexibility without compromising the environmental benefits of the RFG/anti-dumping program. As a result, we are requesting comments on how the flexibility afforded in today's rule can be practically extended to refiners in this situation. If, based on the comments we receive, we are able to determine practical and effective procedures for extending this flexibility, we would adopt those procedures through notice and comment rulemaking. In the meantime, we believe that finalizing the previously proposed procedures for using PGC is appropriate as they will provide industry with additional blending flexibility without compromising environmental goals. We believe this additional flexibility will be beneficial to refiners and may ease potential supply problems, particularly with regard to RFG in the summertime.

Several commenters said that the proposed revision of § 80.78(a)(5), which prohibits the combining of RFG with conventional gasoline or blendstock except where a refiner does so under the requirements specified in § 80.65(i), would have the unintended effect of prohibiting the downgrading of RFG to conventional gasoline. We agree this would be an unintended consequence of the revision of § 80.78(a)(5) as proposed. As a result, § 80.78(a)(5) is being finalized as proposed, except for minor word changes and the addition of language which specifically allows RFG to be combined with conventional gasoline or blendstock if the combined product is designated as conventional gasoline.

To ensure effective enforcement of the RFG and conventional gasoline regulations, today's rule includes recordkeeping requirements applicable to the PCG option which require retention of records demonstrating the storage and movement of the PCG from the time it is received at the refinery until it is used in the production of gasoline. Today's rule also includes a requirement to submit information relating to PCG batches in compliance reports to EPA. In addition, today's rule includes attest procedures which require the auditor to verify that PCG was used to produce gasoline at the refinery, and that the PCG batch report to EPA is consistent with both the refiner's sampling and testing of the PCG and the PCG product transfer documents when received at the refinery.

The recordkeeping and reporting requirements in today's rule were included in the NPRM in the case of PCG used to produce RFG, but were inadvertently omitted in the NPRM for PCG used to produce conventional gasoline. We believe these recordkeeping and reporting requirements are necessary enforcement tools for tracking the use of PCG for conventional gasoline as well as RFG, and are a logical outgrowth of the PCG proposal. The recordkeeping and reporting requirements for using PCG to produce conventional gasoline are minimal, as they are for RFG, and any burden associated with these requirements would be more than offset by the additional flexibility provided by the PCG provisions. We received no negative comments on the proposed recordkeeping and reporting requirements for RFG producers under the PCG rule, and we have no reason to believe that there would be any unique burdens associated with the recordkeeping and reporting requirements for conventional gasoline producers under the rule. Consideration of the burdens associated with recordkeeping and reporting for conventional gasoline producers as well as for RFG producers who use PCG was included in the ICR for the proposed rule.

As a result, the recordkeeping and reporting provisions relating to PCG used to produce RFG are being finalized as proposed, except that in some cases the provisions have been reworded or reordered slightly from the proposed rule for purposes of clarity. These modifications do not change the substance of the rule as proposed. The recordkeeping and reporting requirements relating to use of PCG to produce conventional gasoline finalized in today's rule mirror the recordkeeping and reporting requirements for PCG used to produce RFG. We received no negative comments on the attest engagement requirements relating to the

PCG provisions, and these requirements being finalized as proposed.

Section 80.340(c) of today's rule provides that the procedures for using PCG may be applied under the gasoline sulfur regulations in Subpart H. We believe that the PCG procedures in today's rule provide an appropriate alternative method to the existing methods in § 80.340 for demonstrating compliance with the sulfur requirements where PCG is used to produce gasoline. Moreover, we believe that this approach is necessary for purposes of regulatory consistency. Under the gasoline sulfur regulations, parties are required to include in their annual averaging sulfur reports batch information as reported under the RFG/anti-dumping regulations. Where the PCG procedures in today's rule are used, the batch reports submitted under the RFG/anti-dumping regulations will reflect the PCG as a negative batch and the batch of gasoline produced using the PCG as a separate new batch. Therefore, where PCG is used, the method of demonstrating compliance under the gasoline sulfur regulations should relate to the batch reports submitted under the RFG/anti-dumping regulations. While this particular approach was not proposed, we believe that the provisions for allowing use of the PCG procedures under the gasoline sulfur regulations are a necessary and logical outgrowth of the proposal for using PCG.

On May 17, 2001, the National Energy Policy Development Group (NEPD) recommended that EPA ''study opportunities to maintain or improve the environmental benefits of state and local 'boutique' clean fuel programs while exploring ways to increase the flexibility of the fuels distribution infrastructure, improve fungibility, and provide added market liquidity.'' In response to the NEPD charge, EPA included in its boutique fuel report a series of regulatory actions, including today's action regarding PCG, intended to better facilitate seasonal gasoline transition and address gasoline supply and fungibility concerns during periods of low gasoline inventories. We are able to finalize the PCG procedures now, in advance of other intended EPA actions, because they were previously proposed by EPA. We expect that the flexibilities provided in today's action will promote improved availability of fuel meeting the range of environmental and market needs. Action on the other boutique fuel regulatory recommendations targeted at facilitating the transition from winter to summer fuel should be completed in advance of next year's ozone season.

II. Changing Service of Gasoline Storage Tanks

Today's rule finalizes procedures for changing the service of gasoline storage tanks. These procedures were originally issued in Question and Answer guidance documents. See Reformulated Gasoline and Anti-Dumping Questions and Answers, November 21, 1994, February 21, 1995. As discussed below, these procedures may be used for tank turnovers during the transition to VOC controlled gasoline in the spring. We are currently assessing other aspects of the regulatory requirements regarding the transition to the VOC control season. If we determine that additional changes to the regulations relating to the VOC transition period are appropriate, they will be addressed in a subsequent **Federal Register** notice.

Section 80.78(a) requires the segregation of several categories of gasoline. Prior to today's final rule, these segregation requirements prohibited the mixing of *any* amount of the gasolines that must be segregated. As a result, if a refiner wishes to change a tank's service, and the old and new gasolines are types that are required to be segregated, the new gasoline may not be added unless the tank is completely free of any amount of the old gasoline. Moreover, under the regulations prior to today's rulemaking, a party who combines *any* volume of blendstock with RFG or conventional gasoline has produced an additional volume of gasoline which constitutes ''refining.'' For any such action, the refiner must meet all standards and requirements that apply to refiners of RFG or conventional gasoline. As a result, if a refiner were to change a gasoline storage tank's service in a manner that results in some volume of blendstocks being mixed with RFG or conventional gasoline, the refiner would be required to meet all of the standards and requirements for that ''batch'' of gasoline.

We recognize that when many gasoline storage tanks are pumped as low as possible, a residual volume of gasoline or blendstock remains in the tank (called the tank ''heel''), and in the terminal's manifolds and pipes that serve the tank. We believe it is very difficult and impractical to eliminate these residual volumes. As a result, we proposed that, under certain conditions and constraints, where a refiner changes the service of a gasoline storage tank, pipe, or manifold for legitimate business reasons (unrelated to any goal of mixing dissimilar gasolines or blendstock), such refiner would be allowed to mix products that normally must remain segregated.

We also proposed an additional option that would apply to oxygenate blenders. We proposed that this option would be available only where the oxygenate blender is unable to meet the tank transition requirements discussed above. We proposed this option because, in some cases, the requirements for tank transition under the proposed provisions are not feasible without risk that a terminal would have to be closed during at least part of the transition period. For example, where a terminal operator supplies RFG containing MTBE during the summer VOC season, and RFG containing ethanol outside the VOC season, the terminal tank would have to transition from RBOB to RFG in the spring, and from RFG to RBOB in the fall. Under the change-of-service requirements described above, in the spring the storage tank's RBOB content would have to be drawn-down to the minimum level possible through normal pumping operations before any RFG could be added to the tank. However, to meet this requirement, the party may have to take the storage tank out of service if the ''minimum level'' is reached before new product is available to be transferred into the tank. If the terminal has limited tankage it may be unable to supply gasoline during the time the storage tank remains out of service, which could adversely affect gasoline supplies for some parties. The same difficulty could occur when transitioning from RFG to RBOB in the fall.

To minimize the likelihood that a party would have to take a tank out of service to transition product types, we proposed to allow parties to receive RFG in a tank containing RBOB in the spring prior to the beginning of the VOC season, and receive RBOB in a tank containing RFG in the fall after the end of the VOC season. However, under this option, parties would be required to ensure that all RFG downstream standards, including the oxygen standard, are met during the transition. In addition, the transition must occur outside the period VOC control standards apply at the terminal (i.e., May 1 through September 15 each year). For further discussion, see the Notice of Proposed Rulemaking for this action at 62 FR 37358–59 (July 11, 1997).

We received one comment on the proposal regarding change of service of gasoline storage tanks. The commenter said that the cite to § 80.78(a)(1)(iii) in the change of service provisions appears to be incorrect. We agree with the comment, and the provisions for changing service of gasoline storage

tanks are being finalized as proposed, except that the cite to § 80.78(a)(1)(iii) has been deleted.

III. Public Participation

In the NPRM, we solicited comments on the need to take the actions proposed, including the actions finalized today. We have reviewed and considered all written comments on the provisions in today's rule. Responses to comments are contained in the preamble to this rule. All comments received by EPA are located in the EPA Air Docket, Docket A–97–03 (See **ADDRESSES** section of this preamble). Comments solicited at the end of Section I. of this preamble should be submitted to the address listed in the **ADDRESSES** section of this preamble. Please also submit a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

IV. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a ''significant regulatory action.''

B. Compliance With the Regulatory Flexibility Act

We have determined that this rule would not have a significant impact on a substantial number of small entities, and that it is therefore not necessary to prepare a regulatory flexibility analysis in conjunction with this final rule. This rule would not have a significant impact on a substantial number of small entities because it involves optional provisions intended to promote successful implementation of the RFG and anti-dumping requirements and to afford regulated parties with greater flexibility to blend gasoline and implement tank turnovers. As such, this final rule will be beneficial to industry and may have the potential to ease gasoline supply shortages.

C. Paperwork Reduction Act

The information collection requirements related to the provisions finalized today have been submitted for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) was prepared by EPA (ICR No. 1591.12) and a copy may be obtained from Susan Auby, OIC Collection Strategies Division; U.S. Environmental Protection Agency (mail code 2822); 1200 Penn. Ave NW; Washington, DC 20460, or by calling (202) 260–4901. Insert the ICR title and/or OMB control number in any correspondence. Copies may also be downloaded from the Internet at *http://www.epa.gov.icr.*

Under today's final rule, EPA is requiring refiners to keep certain records associated with the provisions for using PCG to produce gasoline. However, EPA believes that this requirement will be met using documents created and kept for commercial business purposes; i.e., documents that show the movement of PCG to blending tanks and volume and parameter measurements. This requirement, therefore, is not expected to impose additional recordkeeping burdens on regulated parties. This final rule also requires refiners to include information regarding PCG batches in their RFG and anti-dumping compliance reports. However, since the required information regarding PCG batches, such as volume and parameter measurements, will be created for commercial business purposes, including this information in the EPA reports is expected to impose only a minimal additional burden on regulated parties. An estimate of the information collection burden is contained in the ICR for this rule.[2]

Burden means the total time, effort, or financial resources, expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with the previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Chapter 15.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if EPA provides an

[2] There are no new recordkeeping or reporting requirements included in today's final tank change-over provisions. Any recordkeeping obligations associated with the refining or blending activities, and related sampling, described in the new tank change-over provisions are covered by an existing reformulated gasoline ICR. OMB Control #2060.0277. Additionally, to the extent that the new tank change-over provisions allow for activities that would otherwise subject a party to regulation as a refiner, the very limited sampling and testing obligations of today's final rule represent a relaxation of the sampling and testing obligations otherwise applicable to refiners, and therefore a relaxation in any potential recordkeeping and reporting obligations.

explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in this final rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. This action provides refiners with optional procedures for blending gasoline and performing tank turnovers. This action, in fact, is expected to reduce the burden on regulated entities by providing them with this additional flexibility. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

2. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this rule was developed during the period when Executive Order 13084 was still in force, and so Tribal considerations were addressed under Executive Order 13084.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. The requirements for private businesses in today's document would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, EPA's conclusions regarding the impacts from the implementation of today's rule discussed in the other sections of this document are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

3. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.) Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule allows industry greater flexibility to blend gasoline components in a manner that will not result in any negative effect on air quality. As a result, the effect of this rule on the states, if any, will be positive in that the blending flexibility afforded by this rule may help to ensure that adequate supplies of gasoline are available, particularly in areas that require RFG. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule includes a provision which requires the testing of gasoline in a storage tank after the service of the tank has been changed. This provision is included in today's rule to ensure that the quality of the gasoline is not compromised through the process of changing the service of the tank. This provision is consistent with the NTTAA since it allows parties to use alternative test methods to fulfill this requirement rather than using the regulatory test methods, provided that the alternative methods are approved by the American Society of Testing and Materials (ASTM), the protocols of the ASTM methods are followed, and the alternative methods are correlated to the regulatory method.

F. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866 and it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. The reformulated gasoline program is designed to reduce vehicle emissions of toxic and ozone-forming substances. This rule will not affect the air quality benefits of the reformulated gasoline program.

G. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must summit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. Although no assessment is required under Executive Order 13211, we believe that today's rule should help to alleviate energy supply or distribution concerns in certain situations, since the additional flexibility provided to refiners under the rule will help to facilitate seasonal gasoline transitions and address gasoline supply and fungibility problems during periods of low gasoline inventories.

V. Statutory Provisions and Legal Authority

Statutory authority for today's final rule comes from sections 211(c) and 211(k) of the CAA (42.U.S.C. 7545(c) and (k)). Section 211(c) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the procedural aspects of the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: December 19, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.65 is amended by revising paragraph (i) to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(i) *Exclusion of previously certified gasoline.* Any refiner who uses previously certified reformulated or conventional gasoline or RBOB to produce reformulated gasoline or RBOB must exclude the previously certified gasoline for purposes of demonstrating compliance with the standards under § 80.41. This exclusion must be accomplished by the refiner as follows:

(1)(i) Determine the volume and properties of each batch of previously certified gasoline used to produce reformulated gasoline or RBOB using the procedures in paragraph (e)(1) of this section and § 80.66, and the independent analysis requirements in paragraph (f) of this section in the case of previously certified reformulated gasoline.

(ii) In the case of previously certified reformulated gasoline or RBOB determine the emissions performances for toxics and NO_X, and VOC for VOC-controlled gasoline, and the designations for VOC control.

(iii) In the case of previously certified conventional gasoline determine the exhaust toxics and NO_X emissions performances.

(2) Determine the volume and properties, and the emissions performance for toxics and NO_X, and VOC for VOC-controlled gasoline, of any batch of reformulated gasoline or RBOB produced at the refinery using previously certified gasoline and include each batch in the refinery's compliance calculations without regard to the presence of previously certified gasoline in the batch.

(3) In the case of any parameter or emissions performance standard that the refiner has designated for the refinery to meet on a per-gallon basis under paragraph (d)(2)(v) of this section, the per-gallon standard that applies to any batch of reformulated gasoline or RBOB produced by the refinery is as follows:

(i) When using any previously certified reformulated gasoline or RBOB, the more stringent of:

(A) The per-gallon standard that applies to the refinery under § 80.41; or

(B) The most stringent value for that parameter or emissions performance for any previously certified reformulated gasoline or RBOB used to produce the batch.

(ii) When using any previously certified conventional gasoline, the per-gallon standard that applies to the refinery under § 80.41.

(4) In the case of any parameter or emissions performance standard that the refiner has designated for the refinery to meet on average under paragraph (d)(2)(v) of this section, any previously certified gasoline must be excluded from the refinery's compliance calculations as follows:

(i) Where a refiner uses previously certified reformulated gasoline or RBOB to produce reformulated gasoline or RBOB:

(A) The refiner must include the volume and properties of any batch of previously certified reformulated gasoline or RBOB in the refinery's compliance calculations for the standard under § 80.67(g) as a negative batch, by multiplying the term V_i in § 80.67(g)(1)(ii) (i.e., the batch volume) times negative 1; and

(B) The negative batch under paragraph (i)(4)(i)(A) of this section must be included in the averaging categories that correspond to the designation regarding VOC control of the previously certified gasoline batch when received; and

(C) The net volume of gasoline in the refinery's reformulated gasoline compliance calculations must be positive in each of the following categories where the standard is being met on average:

Standard	Gasoline category that must have net positive volume
(*1*) Oxygen	All RFG [1].
(*2*) Benzene	All RFG and RBOB.
(*3*) VOC emissions performance.	(*i*)RFG and RBOB that is VOC-controlled for Region 1. (*ii*) RFG and RBOB that is VOC-controlled for Region 2.
(*4*) Toxics emissions performance.	All RFG and RBOB.
(*5*) NO_X emissions performance.	(*i*) All RFG and RBOB. (*ii*) RFG and RBOB that is VOC-controlled.

[1] ''RFG'' is an abbreviation for reformulated gasoline.

(ii) Where a refiner uses previously certified conventional gasoline to produce reformulated gasoline or RBOB:

(A) The refiner must include the volume and properties of any batch of previously certified conventional gasoline as a negative batch in the refiner's anti-dumping compliance calculations under § 80.101(g) for the refinery, or where applicable, the refiner's aggregation under § 80.101(h); and

(B) The net volume of gasoline in the refiner's anti-dumping compliance calculations for the refinery, or, where applicable, the refiner's aggregation under § 80.101(h), must be positive.

(5) The refiner must use any previously certified gasoline that the refiner includes as a negative batch under paragraph (i)(4) of this section in its compliance calculations for the refinery, or where appropriate, the refiner's aggregation, as a component in gasoline production during the annual averaging period in which the previously certified gasoline was included as a negative batch in the refiner's compliance calculations.

(6) (i) Any refiner may use the procedures specified in this paragraph (i) to combine previously certified conventional gasoline with reformulated gasoline or RBOB, to reclassify conventional gasoline into reformulated gasoline or RBOB, or to change the designations of reformulated gasoline or RBOB with regard to VOC control.

(ii) The procedures under this section are refinery procedures. Any person who uses the procedures under this section is a refiner who must meet all requirements applicable to refiners under this subpart.

(7) Nothing in this paragraph (i) prevents any party from combining previously certified reformulated gasolines from different sources in a manner that does not violate the prohibitions in § 80.78(a).

3. Section 80.74 is amended by:

a. Removing the word ''and'' at the end of paragraph (b)(5).

b. Removing the period and adding a semicolon and the word ''and'' at the end of paragraph (b)(6).

c. Adding paragraph (b)(7).

The addition reads as follows:

§ 80.74 Recordkeeping requirements.

* * * * *

(b)* * *

(7) In the case of any gasoline classified as previously certified gasoline under the terms of § 80.65(i):

(i) Results of the tests to determine the properties and volume of the previously certified gasoline when received at the refinery; and

(ii) Records that reflect the storage and movement of the previously certified gasoline within the refinery to the point the previously certified gasoline is used to produce reformulated gasoline or RBOB.

* * * * *

4. Section 80.75 is amended by:

a. Removing the word ''and'' at the end of paragraph (a)(2)(vi).

b. Removing the period and adding a semicolon and the word ''and'' to the end of paragraph (a)(2)(vii).

c. Adding paragraph (a)(2)(viii).

The addition reads as follows:

§ 80.75 Reporting requirements.

* * * * *

(a) * * *

(2) * * *

(viii) In the case of any previously certified gasoline used in a refinery operation under the terms of § 80.65(i), the following information relative to the previously certified gasoline when received at the refinery:

(A) Identification of the previously certified gasoline as such;

(B) The batch number assigned by the receiving refinery;

(C) The date of receipt; and

(D) The volume, properties and designation of the batch.

* * * * *

5. Section 80.78 is amended by:

a. Revising paragraphs (a)(5) and (a)(10).

b. Removing the word ''or'' at the end of paragraph (a)(7)(i).

c. Removing the period at the end of paragraph (a)(7)(ii) and adding in its place '';or''.

d. Adding paragraphs (a)(7)(iii) and (a)(11).

The revisions and additions to read as follows:

§ 80.78 Controls and prohibitions on reformulated gasoline.

* * * * *

(a) * * *

(5) No person may combine any reformulated gasoline with any conventional gasoline or blendstock, except that a refiner may do so at a refinery under the requirements specified in § 80.65(i), or if the combined product is designated as conventional gasoline.

* * * * *

(7) * * *

(iii) Under the terms of paragraph (a)(5) of this section.

* * * * *

(10) The prohibitions against combining certain categories of gasoline under paragraphs (a)(5), (a)(7) and (a)(8) of this section do not apply in the case of a party who is changing the type of gasoline stored in a gasoline storage tank or the type of gasoline transported through a gasoline pipe or manifold within a single facility (a gasoline storage tank, pipe, or manifold change of service), or in the case of a change of service that involves mixing gasoline with blendstock, provided that:

(i) The change of service is for a legitimate operational reason and is not for the purpose of combining the categories of gasoline or of combining gasoline with blendstock;

(ii) Prior to adding product of the new category the volume of product of the old category in the tank, pipe or manifold is made as low as possible through normal pumping operations;

(iii) The volume of product of the new category that is added to the tank, pipe or manifold is as large as possible taking into account the availability of product of the new category; and

(iv) In any case where the new category of product is reformulated gasoline, subsequent to adding the gasoline of the new category, a representative sample from the tank, pipe or manifold is collected and analyzed, and such analysis shows compliance with each standard under § 80.41 that is relevant to the new gasoline category. The analysis for each standard must be conducted using the method specified under § 80.46, or using another method that is approved by the American Society of Testing and Materials (ASTM), provided that the protocols of the ASTM method are followed and the alternative method is correlated to the method specified under § 80.46.

(11) The prohibition against combining reformulated gasoline with RBOB under paragraph (a)(8) of this section does not apply in the case of a party who is changing the type of product stored in a tank from which trucks are loaded, from reformulated gasoline to RBOB, or vice versa, provided that:

(i) The change of service requirements described in paragraph (a)(10) of this section cannot be met without taking the storage tank out of service;

(ii) Prior to adding product of the new category the volume of product of the old category in the tank is drawn down to the lowest point which allows trucks to be loaded during the transition;

(iii) The volume of product of the new category that is added to the tank is as large as possible taking into account the availability of product of the new category;

(iv) When transitioning from RBOB to reformulated gasoline:

(A) If the reformulated gasoline in the storage tank has an oxygen content of less than 1.5 wt%, oxygenate must be blended into the reformulated gasoline at the loading rack such that the reformulated gasoline has a minimum oxygen content of 1.5 wt%;

(B) Subsequent to any oxygenate blending, the reformulated gasoline must meet all applicable standards that apply at the terminal; and

(C) Prior to the date the VOC-control standards apply to the terminal the reformulated gasoline in the storage tank must have an oxygen content of not less than 1.5 wt%;

(v) When transitioning from reformulated gasoline to RBOB:

(A) The oxygen content of the reformulated gasoline produced using the RBOB must be not less than the minimum oxygen amount specified in the RBOB product transfer documents;

(B) Subsequent to any oxygenate blending, the reformulated gasoline produced using the RBOB must meet all applicable standards that apply at the terminal; and

(C) The transition from reformulated gasoline to RBOB may not begin until the date the VOC-control standards no longer apply to the terminal; and

(vi) The party must demonstrate compliance with the requirements specified in paragraphs (a)(11)(iv) and (v) of this section through testing of samples collected from the terminal storage tank and from trucks loaded at the terminal subsequent to each receipt of new product until the transition is complete. The analyses must be conducted using the test method specified under § 80.46, or using another test method that is approved by the American Society of Testing and Materials (ASTM), provided that the protocols of the ASTM method are followed and the alternative method is correlated with the method specified under § 80.46.

* * * * *

6. Section 80.101 is amended by adding paragraph (g)(9) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(g) * * *

(9) *Exclusion of previously certified gasoline and blendstock.* (i) Any refiner who uses previously certified reformulated or conventional gasoline or RBOB, or blendstock that previously has been included in compliance calculations under § 80.102, to produce conventional gasoline at a refinery, must exclude the previously certified gasoline and blendstock for purposes of demonstrating compliance with the standards under paragraph (b) of this section.

(ii) To accomplish the exclusion required in paragraph (g)(9)(i) of this section, the refiner must determine the volume and properties of the previously certified gasoline or previously certified blendstock used at the refinery, and the volume and properties of gasoline produced at the refinery, and use the compliance calculation procedures in paragraphs (g)(9)(iii) and (g)(9)(iv) of this section.

(iii) For each batch of previously certified gasoline or blendstock that is used to produce conventional gasoline the refiner must:

(A) Determine the volume and properties using the procedures in paragraph (i) of this section;

(B) In the case of previously certified gasoline, determine the exhaust toxics and NO_X emissions performance using the summer or winter complex model, as appropriate;

(C) In the case of previously certified blendstock, determine the exhaust toxics and NO_X equivalent emissions performance using the procedures in paragraph (g)(3) of this section;

(D) Include the volume and emissions performance of the previously certified gasoline and/or blendstocks as a negative volume and a negative emissions performance in the refiner's compliance calculations for the refinery, or where applicable, the refiner's aggregation under paragraph (h) of this section, for exhaust toxics and NO_X.

(iv) For each batch of conventional gasoline produced at the refinery using previously certified gasoline or blendstock, the refiner must determine the volume and properties, and exhaust toxics and NO_X emissions performance, and include each batch in the refinery's compliance calculations for exhaust toxics and NO_X without regard to the presence of previously certified gasoline or blendstock in the batch.

(v) The refiner must use any previously certified gasoline that the refiner includes as a negative batch in its compliance calculations for the refinery, or where appropriate, the refiner's aggregation, as a component in gasoline production during the annual averaging period in which the previously certified gasoline was included as a negative batch in the refiner's compliance calculations.

(vi) Notwithstanding the provisions of this paragraph (g)(9), the provisions of paragraph (g)(3) of this section may be used to calculate the exhaust toxics and NO_X emissions performance of a blendstock added to conventional gasoline for purposes of demonstrating compliance with the standards under paragraph (b) of this section.

* * * * *

7. Section 80.104 is amended by adding paragraph (a)(2)(xii) to read as follows:

§ 80.104 Recordkeeping requirements.

* * * * *

(a) * * *

(2) * * *

(xii) In the case of gasoline classified as previously certified gasoline under

the terms of § 80.101(g)(9), the results of the tests to determine the properties and volume of the previously certified gasoline when received at the refinery and records that reflect the storage and movement of the previously certified gasoline to the point the previously certified gasoline is used to produce conventional gasoline.

* * * * *

8. Section 80.105 is amended by adding paragraph (a)(5)(vi) to read as follows:

§ 80.105 Reporting requirements.

(a) * * *

(5) * * *

(vi) In the case of any previously certified gasoline used in a refinery operation under the terms of § 80.101(g)(9), the following information relative to the previously certified gasoline when received at the refinery:

(A) Identification of the previously certified gasoline as such;

(B) The batch number assigned by the receiving refinery;

(C) The date of receipt; and

(D) The volume, properties and designation of the batch.

* * * * *

9. Section 80.131 is added to Subpart F read as follows:

§ 80.131 Agreed upon attest engagement procedures for previously certified gasoline.

The following are the agreed upon procedures which must be carried out pursuant to the attest engagement requirements of § 80.125 where a refiner uses previously certified gasoline under the provisions of § 80.65(i) and § 80.101(g)(9):

(a) Obtain a listing of all previously certified gasoline batches reported to EPA by the refiner. Agree the total volume of previously certified gasoline from the listing of previously certified gasoline received to the volume of previously certified gasoline reported to EPA.

(b) Select a sample, in accordance with the guidelines in § 80.127, from the listing obtained in paragraph (a) of this section, and for each previously certified gasoline batch selected perform the following:

(1) Trace the previously certified gasoline batch to the tank activity records. Confirm that the previously certified gasoline was included in a batch of reformulated or conventional gasoline produced at the refinery.

(2) Obtain the refiner's laboratory analysis and volume measurement for the previously certified gasoline when received and agree the properties and volume listed in the corresponding batch report submitted to the EPA to the laboratory analysis and volume measurements.

(3) Obtain the product transfer documents for the previously certified gasoline when received and agree the designations from the product transfer documents to designations in the corresponding batch report submitted to EPA (reformulated gasoline, RBOB or conventional gasoline, and designations regarding VOC control).

10. Section 80.340 is amended by adding paragraph (c) to read as follows:

§ 80.340 What standards and requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

* * * * *

(c) The procedures in §§ 80.65(i) and 80.101(g)(9) may be applied for purposes of demonstrating compliance with the sulfur standards under this subpart.

[FR Doc. 01–31935 Filed 12–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL–7122–2]

RIN 2050–AE86

Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received an adverse comment, we are withdrawing the direct final rule for Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste. We published the direct final rule on October 23, 2001 (66 FR 53535) to expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills in addition to municipal solid waste landfill units. We stated in the direct final rule that if we received any adverse comments by November 23, 2001, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received an adverse comment on the direct final rule. We will address those comments in a subsequent final action based on the parallel proposal also published on October 23, 2001 (66 FR 53566).

DATES: As of December 28, 2001, EPA withdraws the direct final rule published at 66 FR 53535 on October 23, 2001.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of this withdrawal, contact Paul Cassidy, Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (703) 308–7281, *cassidy.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: More information about this action can be found at *http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/pb-paint.htm.* On October 23, 2001, EPA published in the **Federal Register** at 66 FR 53535 a direct final rule for Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste. This direct final rule was to expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills in addition to municipal solid waste landfill units. On the same date, EPA published a separate document at 66 FR 53566 to serve as the proposal to Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste if adverse comments were filed. The rule was scheduled to become effective on January 22, 2002 unless EPA received adverse comments by November 23, 2001. We subsequently received an adverse comment on the direct final rule. Consequently, we are withdrawing the direct final rule and it will not become effective on January 22, 2002.

Dated: December 18, 2001.

Christine Todd Whitman,

Administrator.

Accordingly, the amendments and additions to Part 257 and Part 258 are withdrawn as of December 28, 2001.

[FR Doc. 01–31798 Filed 12–27–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 486

[CMS–3064–IFC]

RIN 0938–AK81

Medicare and Medicaid Programs; Emergency Recertification for Coverage for Organ Procurement Organizations (OPOs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period recertifies the existing designated organ procurement organizations (OPOs) that meet, or have met, the standards for a qualified OPO within a 4 year period ending December 31, 2001 and have current agreements with the Secretary that are scheduled to terminate on July 31, 2002. Those agreements will be extended to July 31, 2006. The Organ Procurement Organization Certification Act of 2000 amended the Public Health Service Act to require CMS to increase the certification cycle for OPOs from 2 years to at least 4 years. We are issuing this interim final rule to establish a 4 year recertification cycle and to permit payments to continue to be made to all 59 OPOs after January 1, 2002.

DATES: Effective date: These regulations are effective on December 28, 2001.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 26, 2002.

ADDRESSES: In commenting, please refer to file code CMS–3064–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Mail written comments (one original and three copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3064–IFC, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jacqueline Morgan, (410) 786–4282.

Marcia Newton (410) 786–5265.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call telephone number (410) 786–9994.

I. Background

Organ procurement organizations (OPOs) play a crucial role in ensuring that an immensely valuable but scarce resource-transplantable human organs-become available to seriously ill patients who are on waiting lists for organ transplant. OPOs are government contractors for the length of their contract cycle. They are responsible for identifying potential organ donors and for obtaining as many organs as possible from those donors. They are also responsible for ensuring that the organs they obtain are properly preserved and quickly delivered to a suitable recipient awaiting transplantation. OPO performance is therefore a critical element of the organ transplant program. An OPO that is efficient in procuring organs and delivering them to recipients will, quite literally, save more lives than an ineffective OPO. Among other things, Congress has directed the Secretary to establish performance standards for OPOs, to ensure that federal funds go primarily to the most efficient OPOs and to ensure that OPOs have an incentive to achieve higher performance.

In order to be an OPO, an entity must be certified or recertified by CMS as meeting the Public Health Service Act requirements to be a qualified OPO and must meet performance standards specified by the Secretary. In addition, in order to receive payment under the Medicare and Medicaid programs for organ procurement costs, the entity must be designated or redesignated by CMS as the OPO for a defined geographic service area.

There are 59 OPOs that have been certified by CMS and designated for specific geographic service areas. At the conclusion of the most recent performance data cycle (the cycle in which we analyzed OPO performance data generated during the period of January 1, 1998 through December 31, 1999), 56 of the 59 OPOs were found by CMS to have met the performance standards and agreements were made through July 31, 2002. After additional legislation was enacted in November 2000, those three OPOs that did not meet the performance standards were notified by CMS on November 17, 2000 that their agreements were extended through July 31, 2002, based on section 1138(b)(1)(A) of the Social Security Act. Each of these three OPOs had been certified or recertified as meeting the performance standards for the previous 2 year performance period (January 1, 1996 through December 31, 1997.)

We are promulgating these rules to increase the OPO recertification period from 2 years to 4 years, in order to be consistent with the period described in the new statute. We are also recertifying all 59 OPOs and extending agreeements with these OPOs until July 31, 2006. We have chosen July 31, 2006 as the ending date of the agreement because our contracts with designated OPOs have historically ended on July 31.

We will publish a separate notice of proposed rulemaking that, among other things, will set forth proposed outcome and process performance standards for OPOs based on empirical evidence, obtained through reasonable efforts, of organ donor potential and other related factors in each service area.

II. Provisions of the Interim Final Rule

We are establishing a new § 486.309, Recertification for the January 1, 2002 through December 31, 2005 period. This section specifies that OPOs that were certified by CMS in the past and currently have agreements with CMS are recertified. The current agreements will be extended through July 31, 2006.

Additionally, we are amending § 486.301 by adding a new paragraph (b)(4) to reflect this change in the scope of the subpart.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all

comments we receive by the date and time specified in the ''**DATES**'' section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued (5 U.S.C. 553(b)(3)(B)).

Further, we generally provide for final rules to be effective no sooner than 30 days after the date of publication unless we find good cause under 5 U.S.C. 553(d)(3) to waive the delay. The purpose of the 30-day waiting period between publication of an administrative agency final rule and its effective date is to give affected parties reasonable time to adjust their behavior before the final rule takes place. This 30-day delay can be waived for good cause.

Section 701 of Pub. L. 106–505 was enacted on November 13, 2000. Section 701(b) included Congressional findings and section 701(c) amended 42 U.S.C. 273(b)(1) to state that a qualified organ procurement organization for which grants are made under 42 U.S.C 273(a) must meet the other requirements of 42 U.S.C. 273 and has been certified or recertified by the Secretary within the previous 4-year period as meeting the performance standards to be a qualified OPO, through a process that either granted certification or recertification within such 4-year period with such certification or recertification in effect as of January 1, 2001 and remaining in effect through the earlier of January 1, 2002 or the completion of recertification through regulations meeting the requirements of 42 U.S.C. 273(b)(1)(D)(ii) that are promulgated by the Secretary by not later than January 1, 2002. Congress then enacted section 219 of Pub. L. 106–554 on December 21, 2000. Section 219(a)–(b) is identical to the language of section 701(b)–(c) in Pub. L. 106–505.

The statute requires CMS to recertify OPOs and to establish at least a 4-year recertification period by January 1, 2002. Otherwise, OPOs would not be certified and we would be unable to make payments to OPOs (or to hospitals on behalf of OPOs) after that date. As discussed later in this preamble, this would put the nation's organ procurement system in jeopardy.

When the legislation was enacted, CMS had just been briefed (November 15, 2000) on results from the Association of Organ Procurement Organization's (AOPO's) model for estimating organ donation potential in hospitals. CMS was in the process of analyzing a similar model developed by the Partnership for Organ Donation and the Harvard School of Public Health, following the completion of a 1-year contract with Harvard to apply their model nationwide. CMS met with AOPO representatives and researchers from the AOPO Death Record Review (DRR) study twice in late January 2001 for further analysis of the AOPO study results and to discuss possible denominators for the numeric performance standards. AOPO's written recommendations for new performance standards were received in March and April 2001, and CMS staff continued discussions with AOPO through May 2001 to gain additional industry input. Analysis of the Harvard and AOPO models continued throughout this time.

CMS concluded that the time needed to develop accurate new performance standards ''based on empirical evidence, obtained through reasonable efforts, of organ donor potential and other related factors'' precluded the possibility of completing all of the required rulemaking by the statutory timeframe. Therefore, the agency is publishing an interim final rule with comment that recertifies all 59 OPOs. We are also extending our agreements with all 59 of the current OPOs until July 31, 2006, on the basis of our observations and experience with those OPOs.

According to section 371(b) of the Public Health Service Act, an OPO must be a ''qualified'' OPO, as determined by the Secretary. According to section 1138 of the Social Security Act, an OPO must be certified or recertified by the Secretary as meeting the standards to be a qualified OPO, must meet performance-related standards prescribed by the Secretary, and must be designated by the Secretary as an OPO in order to receive reimbursement under title XVIII or title XIX. Because section 273(b)(1)(D)(i) would terminate certifications after January 1, 2002, we are issuing this interim final rule to permit all 59 OPOs to continue to function, procure organs and obtain appropriate reimbursement.

The nation's 59 OPOs are responsible for all cadaveric organ recovery in the United States; without OPOs, cadaveric organs will not be recovered. Without recovery of cadaveric organs, very few organ transplants will take place. That is, only organs from living donors would be recovered and transplanted.

As of October 31, 2001, there were 78,518 men, women, and children waiting for an organ transplant. Many of them will die waiting. In fact, every day, more than 15 patients die waiting for an organ. In 2000, there were 17,255 transplants of organs from cadaveric donors, or nearly 47 transplants per day from cadaveric donors. This means that even a 1-day disruption in the nation's organ procurement system could result in the deaths of 47 patients waiting for organs. A 1-week disruption to the nation's organ procurement system could result in the deaths of 329 patients waiting for organs, and a 1-month disruption could result in 1,410 deaths.

Clearly, it is critical that OPOs be recertified by January 1, 2002 in order to continue this work. It would be contrary to the public interest to delay recertifying OPOs until after new outcome and process performance standards were established through notice and comment procedures. Moreover, because OPOs that are currently experienced in providing these services will continue to do so on January 1, 2002, they will not require additional time to prepare to implement these rules. Thus, there is good cause to waive the 30-day delay in effective date established by 5 U.S.C. 553(d). Therefore, we have chosen to publish a final rule with comment recertifying all 59 existing OPOs and establishing a 4-year recertification cycle. Publication as an immediately effective final rule will avert the impending problem that would occur under section 273(b)(1)(D)(i) after January 1, 2002.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day public comment period.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This interim final rule is not a major rule. It does not have any cost or savings impact as it merely recertifies the existing 59 OPOs and does not introduce any new requirements.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all OPOs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in anyone year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will not have an effect on the governments mentioned, nor does it have associated private sector costs. This rule does not have any cost or savings impact as it extends the time period for payments under existing agreements and does not introduce any new requirements.

According to section 1138 of the Social Security Act, an OPO must be certified or recertified by the Secretary as meeting the standards to be a qualified OPO, must meet performance-related standards prescribed by the Secretary, and must be designated by the Secretary as an OPO in order to receive reimbursement under title XVIII or title XIX. Because section 273(b)(1)(D)(i) would terminate certifications after January 1, 2002, we are issuing this interim final rule to permit all 59 OPOs to continue to function, procure organs and obtain appropriate reimbursement.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated previously, this rule does not have a substantial effect on State or local governments.

B. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 486

Health professionals, Medicare, Organ procurement, X-rays.

PART 486—CONDITIONS OF COVERAGE OF SPECIALIZED SERVICES FURNISHED BY SUPPLIERS

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services is amending 42 CFR chapter IV as set forth below:

1. The authority citation for part 486 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart G—Conditions of Coverage: Organ Procurement Organizations

2. Section 486.301 is amended by adding paragraph (b)(4) to read as follows:

§ 486.301 Basis and scope.

* * * * *

(b) * * *

(4) The requirements for an OPO to be recertified for the performance data cycle from January 1, 2002 through December 31, 2005.

3. Section 486.309 is added to read as follows:

§ 486.309 Recertification from January 1, 2002 through December 31, 2005.

An OPO will be considered to be recertified for the period of January 1, 2002 through December 31, 2005 if an entity meets, or has met, the standards to be a qualified OPO within a four year period ending December 31, 2001 and has an agreement with the Secretary that was scheduled to terminate on July 31, 2002. Agreements based on this recertification will end on July 31, 2006.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 7, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 14, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–31724 Filed 12–21–01; 11:04 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 43, and 63

[DA 01–2825]

Removal of References to Sections in the Commission's Rules That No Longer Exist

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission amends references to sections that have been removed from the Commission's rules and amends a section heading.

DATES: Effective December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Telecommunications Division, International Bureau, at (202) 418–1499.

SUPPLEMENTARY INFORMATION: We have removed references to sections in the

Commission's rules. Specifically, we amend § 43.61 to remove the reference to former § 64.1002. We amend § 63.24 to remove the reference to paragraph (c) because there is no paragraph (c) in § 63.24. We revise the heading for § 63.52. Finally, we remove § 1.813. The requirements referenced in § 1.813 are no longer necessary.

List of Subjects

47 CFR Parts 1 and 43

Reporting and recordkeeping requirements.

47 CFR Part 63

Communications common carriers.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 43, and 63 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

§ 1.813 [Removed]

2. Remove § 1.813.

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

3. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

4. Section 43.61 is amended by revising paragraph (a)(1) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

(a) * * *

(1) The information contained in the reports shall include actual traffic and revenue data for each and every service provided by a common carrier, divided among service billed in the United States, service billed outside the United States, and service transiting the United States.

* * * * *

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

5. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

6. Section 63.24 is amended by revising paragraph (b) to read as follows:

§ 63.24 Pro forma assignments and transfers of control.

* * * * *

(b) A *pro forma* assignment or transfer of control of an authorization to provide international telecommunications service is not subject to the requirements of § 63.18. A *pro forma* assignee or a carrier that is the subject of a *pro forma* transfer of control is not required to seek prior Commission approval for the transaction. A *pro forma* assignee must notify the Commission no later than 30 days after the assignment is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment was *pro forma* as defined in paragraph (a) of this section and, together with all previous *pro forma* transactions, does not result in a change of the carrier's ultimate control. A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted.

7. Section 63.52 is amended by revising the section heading to read as follows:

§ 63.52 Copies required; fees; and filing periods for domestic authorizations.

* * * * *

[FR Doc. 01–31865 Filed 12–27–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 01–350]

Federal-State Joint Board on Universal Service; Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver request granted.

SUMMARY: In this document, the Commission grants the State of Alaska (Alaska) a limited waiver, which requires applicants to certify that the services requested will be used solely for educational purposes, subject to the conditions discussed below. The Commission finds that good cause exists to allow members of rural remote communities in Alaska, where there is no local or toll-free dial-up Internet access, to use excess service obtained through the universal service mechanism for schools and libraries when not in use by the schools and libraries for educational purposes.

DATES: Effective January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–1553.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–45 adopted on November 29, 2001 and released on December 3, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, the Commission grants the State of Alaska (Alaska) a limited waiver of § 54.504(b)(2)(ii) of the Commission's rules, which requires applicants to certify that the services requested will be used solely for educational purposes, subject to the conditions discussed below. The Commission finds that good cause exists to allow members of rural remote communities in Alaska, where there is no local or toll-free dial-up Internet access, to use excess service obtained through the universal service mechanism for schools and libraries when not in use by the schools and libraries for educational purposes.

II. Discussion

2. The Commission grants Alaska a limited waiver of § 54.504(b)(2)(ii), to permit members of rural remote communities in Alaska, where there is no local or toll-free dial-up Internet access, to use excess service obtained through the universal service mechanism for schools and libraries when the services are not in use by the schools and libraries for educational purposes. The Commission grants this waiver subject to the following conditions: (1) There is no local or toll-free Internet access available in the community; (2) the school or library has not requested more services than are necessary for educational purposes; (3) no additional costs will be incurred, i.e., services subject to a waiver must be purchased on a non-usage sensitive basis; (4) any use for noneducational purposes will be limited to hours in which the school or library is not open; (5) and the excess services are made available to all capable service providers in a neutral manner that does not require or take into account any commitments or promises from the service providers.

3. This waiver is dependent on Alaska's implementation of these conditions. The Commission believes that these conditions are appropriately tailored to narrow the scope of waiver to ensure the integrity of the schools and libraries mechanism, yet broad enough to provide relief to rural remote communities in Alaska that are encountering economic and distance-related challenges to receiving telecommunications and advanced services. Maximizing the use of services obtained from the schools and libraries program by permitting such rural remote communities to use the excess service that is available as a result of the non-usage sensitive basis of the service and the limited hours that the service is used for educational purposes will further the goals of universal service, consistent with the Act. If these conditions are satisfied, then the Commission will find that special circumstances have been met and that a waiver is in the public interest.

4. As an initial matter, the Commission concludes that there are no statutory prohibition against our waiving § 54.504(b)(2)(ii) of the Commission's rules. Section 254(h)(1)(B) provides that eligible schools and libraries shall receive discounts on certain services for educational purposes. Pursuant to the Commission's discretion to implement the statute, the Commission narrowly constructed its rule to require schools and libraries to certify that they use such discounted services solely for educational purposes. This rule supports the Commission's efforts to guard against fraud, waste, and abuse. Nothing in section 254(h)(1)(B) prohibits the Commission from granting a waiver of § 54.504(b)(2)(ii) of its rules to expand the use of such services, so long as in the first instance they are used for educational purposes.

5. The Commission's rules, however, may only be waived for good cause shown. As noted by the Court of Appeals for the D.C. Circuit, agency rules are presumed valid. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.

6. The Commission finds that Alaska's waiver request satisfies the above-stated conditions. First, Alaska has adequately demonstrated special circumstances. Alaska states that there are approximately 240 communities in the state that lack local or toll-free dial-up access to the Internet. These communities are located in remote areas of the state that are isolated by severe terrain and a harsh climate. Most of these communities are sparsely populated (population under 250), and are reachable only by air or water. As a result, access to information services is minimal and generally cost-prohibitive. In fact, Alaska asserts that start-up costs for an Internet service provider in a village is often more than $20,000, in addition to the monthly cost for a satellite link. Of the communities without local or toll-free dial-up access to the Internet, 135 have available, non-usage sensitive Internet access at local schools or libraries. Given their extreme isolation and the lack of access to affordable Internet services, the Commission believes it is appropriate to allow rural remote areas in Alaska that lack local or toll-free dial up access to the Internet to utilize excess service obtained through the universal service mechanism under the limited circumstances described above.

7. The Commission also concludes that granting Alaska's waiver will serve the public interest. The Commission believes that it is in the public interest to take steps to utilize the excess services obtained through the schools and libraries mechanism. Alaska explains that nearly 75 percent of rural Alaskan communities do not have Internet access via a local dial-up or toll-free connection. In many of these communities, however, schools and libraries have access to information services because of assistance from the schools and libraries mechanism. This waiver will serve the public interest by promoting access to available resources and allowing communities to make use of the excess service. The Commission finds that the waiver is also in the public interest because it is consistent with the Commission's efforts to encourage access to advanced telecommunications and information services.

8. In addition, the Commission believes that each of the conditions imposed with this waiver promotes the public interest by reducing the likelihood of waste, fraud, and abuse, and guarding against additional costs from being imposed on the schools and libraries mechanism. These conditions are discussed separately below.

9. The first condition limits application of the waiver to communities in Alaska where there is no local or toll-free dial-up Internet access. As noted above, many of these communities lack affordable access to the Internet due to their remote nature but also have available, non-usage sensitive connections to the Internet in their schools and libraries. The Commission believes that allowing these communities to access services obtained from the schools and libraries universal service mechanism will serve the public interest by reducing waste and making more efficient use of available resources.

10. Under the second condition, eligible schools and libraries in Alaska are not permitted to request more services than are necessary for educational purposes. Alaska will protect against that possibility by instructing schools and libraries to maintain information documenting the necessity for additional services. This will reduce the likelihood of fraud and abuse by enabling the Schools and Libraries Division of the Universal Service Administrative Company to efficiently assess whether additional requests are associated with educational purposes. As noted above, this waiver only allows for the use of excess service that is incidental to services provided for educational purposes. If there are increases in requests not warranted by educational purposes, we believe that it will be appropriate to reassess the propriety of this waiver.

11. The third condition limits the waiver to communities where the services used by the school are purchased on a non-usage sensitive basis. By limiting implementation of this waiver to communities that pay a flat, non-traffic sensitive rate for services, it reduces wasted resources and it protects against abuse by ensuring that the schools and libraries program does not incur additional costs based on the increased utilization. In addition, the Commission notes that any additional equipment related to the provision of Internet service to the community will not be eligible for support.

12. The fourth condition limits local community usage to hours in which the school or library is not open. By limiting use for non-educational purposes to non-operating hours for the schools and libraries, the Commission guards against abuse by eliminating the possibility that community usage may interfere with usage of services for educational purposes in schools and libraries. In accord with this condition, Alaska will include terms in agreements with ISPs restricting community usage to non-operating hours. Specifically, agreements will include an explicit statement that service is restricted to non-operating hours of the school or library and will designate normal operating hours, along with the anticipated school year calendar. The local Internet service provider will also be required to demonstrate the effectiveness of how it will restrict service to the designated hours.

13. Pursuant to the fifth condition, excess services must be made available to all capable service providers in a neutral manner that does not require or take into account any commitments or promises from the service providers. This condition is consistent with the Act, which prohibits any discounted services or network capacity from ''being sold, resold, or transferred by such user in consideration for money or any other thing of value.'' We believe that this condition will ensure that excess services are not transferred in exchange for any benefit to the school, library, or surrounding community, whether the benefit is a promise of particular services, prices, or other thing of value. This condition will also protect against fraud, waste, and abuse by providing that all public, tribal, non-profit, and commercial entities will be treated equally. We note that there may be circumstances in which demand for the excess services by service providers is greater than the available excess services. In such instances, the school or library may determine priority based on a set of neutral criteria that is consistent with this condition, such as random selection, first-come-first-served, or any other methodology that does not prioritize based on expectations of particular benefits to the institution or surrounding community. The Commission also notes that this condition in no way prohibits schools and libraries from establishing minimal technical requirements to protect the integrity of the institution's network, to ensure that selected providers are actually capable of providing service, or to ensure that selected providers are prepared to offer service.

14. Therefore, because the Commission finds that this waiver is in the public interest and that Alaska has demonstrated special circumstances, we find good cause to grant Alaska's waiver request subject to the provided conditions. The Commission is confident that this waiver will ensure that appropriate steps will be made to ensure the integrity of the schools and libraries universal service mechanism.

III. Ordering Clause

15. Pursuant to sections 1, 4(i), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 254 and 1.3 and 1.925 of the Commission's rules 47 CFR 1.3 and 1.925, the waiver request filed by the State of Alaska on January 29, 2001, is granted, subject to the conditions indicated herein.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–31868 Filed 12–27–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–105; FCC 00–257]

Require 711 Dialing for Nationwide Access to Telecommunications Relay Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction.

SUMMARY: The Commission published a document in the **Federal Register** at 66 FR 54165–01 (October 26, 2001) which corrected certain rules of the Federal Communications Commission (Commission) that concern access to telecommunications relay services (TRS). The document should have amended rule § 64.603 to add a third sentence to the undesignated introductory paragraph that reads: ''In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call.'' This document corrects the sentence to provide the correct date of October 1, 2001.

DATES: Effective October 12, 2000.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, 202/418–0871, fax 202/418–2345, TTY 202/418–0484, *smagnott@fcc.gov,* Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document correcting rule §§ 64.601 and 64.603 in the **Federal Register**. In FR Doc. 01–26942, published October 26, 2001 (66 FR 54165), make the following correction:

PART 64—[CORRECTED]

1. On page 54165, in the second column, correct the rule amendment in § 64.603 to read as follows:

3. In § 64.603, revise the undesignated introductory text to read as follows:

§ 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Speech-to-speech relay service and interstate Spanish language relay service shall be provided by March 1, 2001. In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call. A common carrier shall be considered to be in compliance with these regulations:

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–31867 Filed 12–27–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–132; FCC 01–314]

1998 Biennial Review—Multichannel Video and Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule and clarifications.

SUMMARY: In this document we adopt a Commission rule which provides a limited exception for cable operators with 1000 or more, but fewer than 5000, subscribers. Specifically, such cable systems are relieved from certain recordkeeping requirements associated with maintaining the public file, requiring public file information to be provided only upon request. This action was taken in response to the Commission's 1998 biennial review of the public file and notice requirements concerning cable television. This document also makes a number of clarifications to various part 76 rules.

DATES: Effective January 28, 2002.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW–A–325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sonia Greenaway-Mickle, Cable Services Bureau, (202) 418–1419.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (''Second Order''), FCC 01–314, adopted October 22, 2001; released October 31, 2001. The full text of the Commission's Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at *http://www.fcc.gov/csb/.*

Synopsis of the Second Report and Order

1. In this *1998 Biennial Review—Streamlining of Cable Television Service Part 76 Public File and Notice: Second Report and Order*, the Commission addresses portions of part 76 of the cable television rules pertaining to the public file, notice, recordkeeping, and reporting requirements. First, we reinstate, as a final rule, § 76.1700(a). Second, the Commission clarifies certain provisions in the part 76 rules in order to more clearly set forth the compliance requirements and regulatory process for cable operators, franchising authorities, and the public. Finally, we make non-substantive rule changes to correct errors in the publication of part 76 of the Commission's rules. With this action, we complete the Commission's biennial review of the public file and notice requirements applicable to cable operators under part 76 of the Commission's rules.

2. The part 76 cable television rules contained numerous public file, notice, recordkeeping, and reporting requirements scattered throughout part 76. In connection with the *1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Report and Order*, the Commission revised and streamlined the public file and notice requirements set forth in the Commission's part 76 cable television rules. The *Notice of Proposed Rulemaking* in this proceeding, however, inadvertently was not published in the **Federal Register**. Because the rule changes adopted were deemed to be primarily procedural in nature, the failure of **Federal Register** notice was determined not to impair their effectiveness. In this regard, § 1.412(b)(5) of the Commission's rules, provides that rules involving Commission organization, procedure, or practice are exempt from the requirement of prior notice by publication in the **Federal Register**. Section 76.1700(a), however, was determined to alter the substantive public file requirements for a subset of cable operators and to be subject to the prior public notice requirement. Section 76.1700(a) was published subsequently in the **Federal Register** (65 FR 53610) Sept. 5, 2000, as an ''interim rule,'' and interested parties were afforded an opportunity to comment upon it. No comments were filed.

In this proceeding, we adopt § 76.1700(a) as a final rule.

3. Part 76 rule clarification. We now consider on our own motion, specific rules adopted in part 76 relating to the public file, notice, recordkeeping, and reporting requirements requiring clarification.

4. Section 76.1700(a), entitled, ''Records To Be Maintained Locally By Cable System Operators,'' provides, in part, that cable operators having 1000 or more subscribers but fewer than 5000 subscribers shall, upon request, make public file information available. This provision gives such operators an alternative to maintaining paper files and increases flexibility in complying with the public file maintenance requirements and responding to information requests. Since operators meeting this particular subscriber requirement must produce public file information only upon request, records need not be maintained at a particular local site, provided they are made promptly available once a request is received. Therefore, we clarify the title of § 76.1700 to be more consistent with this particular aspect of the rule. We delete the word ''locally'' from the title to more accurately depict the fact that records need not be maintained locally where the cable system operator meets the specified subscriber limits, so long as the information can be made available ''upon request;'' access should not be delayed. Although the title of the rule section changes, with regard to those cable operators that have 5000 or more subscribers and that are required to maintain a public inspection file, we reiterate that documents required to be included in the public inspection file must be available, readily accessible and sited locally.

5. In the *Report and Order* (65 FR 53610) Sept. 5, 2000, we concluded that the Commission would maintain the exemption for small systems serving fewer than 1000 subscribers from the recordkeeping requirements contained in former § 76.305(a), which is redesignated as § 76.1700(a). Therefore, we clarify that § 76.1700(a) totally exempts systems serving fewer than 1000 subscribers from the Commission's recordkeeping requirements contained in §§ 76.1701 (political file); 76.1715 (sponsorship identification); 76.1702 (equal employment opportunity); 76.1703 (commercial records for children's programming); 76.1704 (proof-of-performance tests data); and 76.1706 (signal leakage logs and repair records). These records do not need to be maintained or produced by systems meeting the subscriber limitation.

6. Section 76.1705 provides that each cable system is required to maintain at its local office a current listing of the cable television channels that the system delivers to its subscribers. Although the rule states that channel listing information should be maintained, no mention is made of exactly where such lists should be located at the local office. In implementing this provision, the Commission stated that such information would be useful to consumers. To the extent necessary, we clarify that the operator of each cable television system subject to the public file requirements of § 76.1700(a) shall maintain as part of its public inspection file a current list of the cable television channels that the system delivers to its

subscribers. Cable operators that are exempt from the public file requirement shall maintain the channel lineup information in a location that is readily accessible by the general public.

7. Section 76.1715 requires that whenever sponsorship announcements are omitted, the cable system operator must maintain for public inspection a file listing the name, address, and telephone number of the advertiser of the commercial announcement. The length of time that such information should be retained is not provided. However, pursuant to § 73.1212, a similar collection of information from broadcast stations is required whenever sponsorship announcements are omitted. In the broadcast context such advertiser information must be retained for a period of two years from the date of broadcast. We interpret § 76.1715 in this *Second Order* to operate consistently with § 73.1212. Provided that it retains the required advertiser information for a period of at least two years after the airing of the commercial announcement, a cable operator will be in compliance with the record retention requirement of § 76.1715. This interpretation will ensure that operators have notice of their responsibilities regarding sponsorship announcement recordkeeping while accommodating the public by ensuring access to such information for an adequate period of time.

Final Regulatory Flexibility Analysis

8. As required by section 603 of the Regulatory Flexibility Act (''RFA''), the Commission incorporated an Initial Regulatory Flexibility Analysis (''IRFA'') into its *Report and Order*. The Commission sought written public comments on the possible impact of the proposed rule on small entities, including comments on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') incorporated into the *Second Report and Order* (''*Second Order*'') conforms to the RFA.

9. Need for, and Objectives of, the *Second Report and Order*. The Commission adopted the *1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Report and Order* (''*Report and Order*'') pursuant to Section 11 of the 1996 Telecommunications Act which requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Section 76.1700(a) was determined to alter the substantive public file requirements for a subset of cable operators and to be subject to the prior public notice requirement. Section 76.1700(a) was published subsequently in the **Federal Register** (65 FR 53610) Sept. 5, 2000, as an interim rule and interested parties were afforded an opportunity to comment upon it. No comments were filed. The *Second Order* reinstates § 76.1700(a).

10. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. No comments were filed specifically in response to the IRFA.

11. Description and Estimate of the Number of Small Entities To Which the Rule Applies. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rule here adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' under Section 3 of the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

12. The *Second Order* adopts § 76.1700(a), a rule that applies to cable operators with 1000 or more, but fewer than 5000, subscribers. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

13. The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, we estimate that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals 1,450. We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

14. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. Section 76.1700(a), adopted in the *Second Order*, will not increase the recordkeeping or information collection requirements for any cable operator. In fact, § 76.1700(a) will decrease certain recordkeeping requirements for cable operators with 1000 or more, but fewer than 5000, subscribers. The rule as adopted eliminates the requirement that cable operators with 1000 or more, but less than 5000, subscribers maintain certain records in their public file. The rule provides that those records need only be provided pursuant to a specific request. Thus, the adopted rule will result in reductions in administrative costs borne by cable operators in connection with reproducing and maintaining certain records in their public files.

15. Steps taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. We are adopting a rule that establishes reduced regulatory burdens on small entities with regard to certain recordkeeping requirements. In addition, we sought comment on the proposed rule to ease the recordkeeping requirements for certain small cable operators. No comments were received and we are aware of no alternatives to further reduce burdens on small entities consistent with the important regulatory objectives served by the reporting requirements.

16. Report to Congress. The Commission will send a copy of the *Second Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). The *Second Order* and this FRFA (or summaries thereof) will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

This *Second Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and does not impose new or modified information collection requirements on the public.

OMB Approval Number: 3060–0981.

Title: *1998 Biennial Regulatory Review '' Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, Second Report and Order.*

Type of Review: None.

Respondents: Businesses or other for-profit entities.

Needs and Uses: The Commission adopted the *Report and Order* pursuant to Section 11 of the 1996 Telecommunications Act which requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presented an excellent opportunity for a thorough examination of all of the Commission's regulations. The initial NPRM in this proceeding was not published in the **Federal Register**. The Commission found that, with the exception of one provision, the rules adopted in the *Report and Order* are procedural in nature and subject to the prior notice exemption contained in § 1.412(b)(5) of the Commission's rules. The **Federal Register** notice provided notice of § 76.1700(a), adopted as an interim rule and provided interested parties the opportunity to comment.

List of Subjects in 47 CFR Part 76

Multichannel video and cable television service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1700 is amended by revising the section heading and the introductory text of paragraph (a) to read as follows:

§ 76.1700 Records to be maintained by cable system operators.

(a) *Recordkeeping requirements.* The operator of every cable television system having fewer than 1,000 subscribers is exempt from the public inspection requirements contained in § 76.1701 (political file); § 76.1715 (sponsorship identification); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); and § 76.1706 (signal leakage logs and repair records). The operator of every cable television system having 1000 or more subscribers but fewer than 5000 subscribers shall, upon request, provide the information required by § 76.1715 (sponsorship identification); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); and § 76.1706 (signal leakage logs and repair records) but shall maintain for public inspection a file containing a copy of all records required to be kept by § 76.1701 (political file). The operator of every cable television system having 5000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by § 76.1701 (political file); § 76.1715 (sponsorship identification); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); and § 76.1706 (signal leakage logs and repair records).

* * * * *

[FR Doc. 01–31869 Filed 12–27–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 2105–ZZ04

Organization and Delegation of Powers and Duties to the Under Secretary of Transportation for Security, Transportation Security Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: A new operating administration, the Transportation Security Administration (TSA), headed by the Under Secretary of Transportation for Security, was established within the United States Department of Transportation (DOT) pursuant to the Aviation and Transportation Security Act [Public Law 107–71 (November 19, 2001)]. Accordingly, by this action, the Secretary of Transportation (Secretary) amends Part 1 of title 49, *Code of Federal Regulations,* to reflect this new DOT operating administration and its general responsibilities.

EFFECTIVE DATE: This Final Rule is effective on December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Steven Cohen, Office of the General Counsel, Office of Environmental, Civil Rights, and General Law, Department of Transportation (C–10), 400 Seventh Street, SW., Room 10101, Washington, DC 20590, (202) 366–4684 (voice), (202) 366–9170 (fax) (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.* You can also view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on ''search.'' On the next page, type in the four-digit docket number shown on the first page of this document. Then click on ''search.''

Background

The Aviation and Transportation Security Act (ATSA) amends Chapter 1 of title 49, United States Code, by establishing TSA within DOT. TSA is headed by the Under Secretary of Transportation for Security. Accordingly, this rule amends Part 1 of title 49, Code of Federal Regulations, to reflect the establishment of TSA. Specifically, these amendments (1) Add the Under Secretary of Transportation for Security to the definition of ''Administrator;'' (2) add TSA to the list of operating elements within DOT that report directly to the Secretary; and (3) set forth TSA's general responsibilities.

This rule is being published as a final rule and made effective on the date signed by the Secretary of Transportation. As the rule relates to departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). This action makes no substantive changes to transportation regulations. In addition, the functions addressed in this rule must be implemented immediately to facilitate the formation of TSA, as created by the Act. Therefore, prior notice and opportunity to comment are unnecessary, and good cause exists to dispense with the 30-day delay in the effective date requirement so that TSA may operate pursuant to the amendments noted above.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

Issued this 20th day of December 2001, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

In consideration of the foregoing, Part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 is revised to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597.

2. In § 1.2, new paragraph (1) is added to read as follows:

§ 1.2 Definitions.

* * * * *

(1) The Under Secretary of Transportation for Security.

3. In § 1.3, new paragraph (b)(12) is added to read as follows:

§ 1.3 Organization of the Department.

* * * * *

(b) * * *

(12) The Transportation Security Administration, headed by the Under Secretary of Transportation for Security.

4. In § 1.4, new paragraph (n) is added to read as follows:

§ 1.4 General responsibilities.

* * * * *

(n) The Transportation Security Administration. Is responsible for:

(1) Security relating to civil aviation and all other modes of transportation within the Department of Transportation, including at transportation facilities;

(2) Federal security screening operations for passenger air transportation and intrastate air transportation;

(3) Managing and carrying out program and regulatory activities, including administering laws and promulgating and enforcing security-related regulations and requirements in all modes of transportation, including at transportation facilities;

(4) Receiving, assessing, coordinating and distributing intelligence information related to transportation security;

(5) Developing, coordinating and carrying out plans to discover, prevent and deal with threats to transportation security;

(6) Identifying and undertaking research and development activities related to enhancing transportation security; and

(7) Coordinating domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security) and overseeing all transportation related responsibilities of the Federal Government, other than the Department of Defense and the military departments, during a national emergency.

[FR Doc. 01–32021 Filed 12–21–01; 4:27 pm]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 011218303-1303-01; I.D. 110501B]

RIN 0648-AP70

Atlantic Highly Migratory Species; Commercial Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule; request for comments; fishing season notification.

SUMMARY: NMFS issues an emergency rule to establish the commercial quotas for large and small coastal sharks at 1,285 metric tons (mt) dressed weight (dw) and 1,760 mt dw, respectively. These regulations are necessary to ensure that the regulations in force are consistent with a court-approved settlement agreement and are based on the best available science. NMFS also notifies eligible participants of the opening and closing dates for the Atlantic large coastal sharks (LCS), small coastal sharks (SCS), pelagic sharks, blue sharks, and porbeagle sharks fishing seasons.

DATES: This emergency rule is effective as of 12:01 a.m., local time, on January 1, 2002, through July 1, 2002.

The fishery opening for LCS is effective January 1, 2002 through 11:30 p.m., local time, April 15, 2002. The LCS closure is effective from 11:30 p.m., local time, April 15, 2002, through June 30, 2002.

The fishery opening for SCS, pelagic sharks, blue sharks, and porbeagle sharks is effective January 1, 2001, through June 30, 2001, unless otherwise modified or superseded through publication of a closure notice in the Federal Register.

Comments on the emergency rule must be received no later than 5 p.m. on March 28, 2002.

ADDRESSES: Written comments on this emergency rule must be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet. Copies of the Environmental Assessment and Regulatory Impact Review prepared for this emergency rule may be obtained from Margo Schulze-

Haugen or Karyl Brewster-Geisz at the same address.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

On November 21, 2000, Southern Offshore Fishing Association and other commercial fishermen and dealers (plaintiffs) and NMFS reached a settlement agreement that prescribed actions to be taken by both parties in order to resolve issues raised in two lawsuits brought against NMFS by the plaintiffs. The first lawsuit was filed on May 2, 1997, regarding the LCS quota decrease of 50 percent. The second lawsuit was filed on June 25, 1999, regarding the commercial shark measures in the HMS FMP and its implementing regulations.

On December 7, 2000, Judge Steven D. Merryday of the U.S. District Court for the Middle District of Florida entered an order approving the settlement agreement. The settlement agreement required NMFS to maintain the 1997 commercial LCS quotas and the catch accounting/monitoring procedures pending an independent review of the 1998 LCS stock assessment. The settlement agreement also required NMFS to maintain the 1997 SCS commercial quota pending a new SCS stock assessment. On March 6, 2001, NMFS published in the **Federal Register** an emergency rule implementing the measures in the settlement agreement pending the results of the independent peer review (65 FR 13441). That emergency rule expired on September 4, 2001.

In October 2001, NMFS received from Natural Resources Consultants Inc. the complete peer reviews of the 1998 LCS stock assessment. Three of the four reviews found that the scientific conclusions and scientific management recommendations contained in the 1998 LCS stock assessment were not based on scientifically reasonable uses of the appropriate fisheries stock assessment techniques and on the best available (at the time of the 1998 LCS stock assessment) biological and fishery information relating to LCS. Because of this conclusion, NMFS regards the management recommendations of the 1996 stock assessment to be an appropriate basis for any rulemaking, pending completion of a new stock assessment. Thus, having considered the peer review's overall conclusion, the terms of the settlement agreement, statements by the individual reviewers, and the recommendations of the 1996 stock assessment, NMFS will maintain the 1997 commercial LCS quota level until a new LCS stock assessment that employs improved assessment techniques and addresses the recommendations and comments of the four reviewers can be completed and independently peer reviewed. NMFS anticipates completion of a new LCS stock assessment in early 2002. Additionally, consistent with the court-approved settlement agreement, NMFS will maintain the SCS commercial shark quota at the 1997 level pending a new stock assessment in early 2002.

NMFS initially determined that the settlement agreement is appropriate because it will conserve Atlantic sharks while maintaining a sustainable fishery in the long-term; move the management process for Atlantic sharks forward through quality-controlled scientific assessment and appropriate rulemaking; and promote confidence in the management process and its underlying science. NMFS continues to maintain this view.

This emergency rule is necessary to manage and conserve LCS based on the best scientific information available, pending completion of a new stock assessment and consistent with the terms of the court-approved settlement agreement. At this time, NMFS considers the best available science to be the recommendations of the 1996 stock assessment in combination with current landings data and the independent reviews of the 1998 stock assessment. Without this emergency rule, the reduced LCS and SCS commercial quotas of 816 mt dw and 329 mt dw, respectively, adopted in the HMS FMP and based on the 1998 LCS stock assessment would be in force. However, the independent peer review found that some of the techniques used in the 1998 LCS stock assessment were not appropriate and some of the data used were unreliable. Implementing these quotas prior to completion of a new stock assessment would be inconsistent with both the court-approved settlement agreement and the recommendations of the 1996 stock assessment.

Commercial Management Measures

Pending completion of new LCS and SCS stock assessments, this emergency rule establishes the LCS commercial quota at 1,285 mt dw; establishes the SCS commercial quota at 1,760 mt dw; suspends the regulation on the ridgeback LCS minimum size; suspends the regulation on counting dead discards and state landings after Federal closures against Federal quotas for all sharks; suspends the regulation on season-specific quota adjustments for LCS and SCS; and establishes a regulation that adjusts the LCS or SCS quota based on the previous season's landings. All of the above management measures will be re-evaluated upon completion of the stock assessments and the LCS peer review before they are re-implemented. This emergency rule does not affect commercial management measures for pelagic sharks, except for counting dead discards or state landings against the quota, and does not affect the management measures for prohibited species.

NMFS considered other alternatives including implementing the HMS FMP quotas based on the 1998 stock assessment, implementing the ridgeback LCS minimum size, counting state landings after a Federal closure and dead discards against Federal quotas, and changing the pelagic shark sub-quotas into one pelagic shark quota. However, based on the comments and recommendations of the reviewers, the recommendations of the 1996 stock assessment, current landings data, and the fact that the next stock assessment will consider the efficacy of most of these management measures, NMFS concluded that, for the short duration of this emergency rule (180 days with a possible extension of another 180 days), the management measures implemented would conserve and maintain the shark stocks while having few impacts on the fishery. Upon completion of the new stock assessments and the independent review of the new LCS stock assessment, NMFS will take the appropriate actions based on the additional information to ensure the conservation of Atlantic sharks while rebuilding shark stocks and maintaining a sustainable fishery in the long-term.

NMFS is making one additional adjustment. NMFS will count any overharvest or underharvest in one season against the following season for LCS and SCS. In the past, this accounting method was used only for overharvest and underharvest in the first season; any overharvest in the second season was not counted against the following season's semiannual quota (nor was any underharvest added to the next year). This lack of across-year accounting resulted in the annual quotas being exceeded in several years. This change is to ensure that the fishing mortality is accounted for and does not exceed the fishing mortality

recommended by the 1996 stock evaluation workshop while also ensuring that fishermen have an opportunity to catch the available quota.

Recreational Management Measures

This emergency rule does not change the recreational management measures for Atlantic sharks. NMFS did consider re-instating the 1997 recreational retention limits of two sharks of any species per trip, with no minimum size, and an additional two Atlantic sharpnose sharks per person per trip. However, based on current and past landings data, the recommendation of the 1996 stock assessment, and individual statements of the peer reviewers, NMFS believes that re-instating the 1997 retention limit could result in a level of fishing mortality that is not consistent with the recommendations of the 1996 stock evaluation workshop. Thus, for the duration of this emergency rule, NMFS will maintain the current regulations. NMFS will take appropriate action with respect to recreational fishing regulations at the earliest practicable date upon completion of the new stock assessments and the independent review of the new LCS stock assessment.

Annual Landings Quotas

The 2002 annual landings quotas for LCS and SCS are established at 1,285 mt dw and 1,760 mt dw, respectively. The 2002 quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw, 273 mt dw, and 92 mt dw, respectively.

Of the 697 mt dw established for the second 2001 semiannual LCS season (66 FR 33918, June 26, 2001), 604 mt dw was taken. NMFS is adding the remaining 93 mt dw to the available quota for the first 2002 semiannual fishing season. As such, the LCS quota for the first 2002 semiannual season is 735.5 mt dw. The SCS first semiannual quota for 2002 is established at 880 mt dw. The first 2002 semiannual quotas for pelagic, blue, and porbeagle sharks are established at 244 mt dw, 136.5 mt dw, and 46 mt dw, respectively.

NMFS will take appropriate action before July 1, 2002, in order to determine and announce the second 2002 semiannual quotas for Atlantic sharks.

Fishing Season Notification

The first semiannual fishing season of the 2002 fishing year for the commercial fishery for LCS, SCS, and pelagic sharks in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open January 1, 2002. To estimate the closure dates of the LCS, NMFS used the average daily catch rates for each species group from the first seasons from the years 1998, 1999, 2000, and 2001 while also considering the reporting dates of permitted shark dealers. Looking at weekly catch rates in recent years, between 92 and 103 percent of the available quota would likely be taken between the first and second weeks of April. The end of the second week of April corresponds with the end of the first of two monthly reporting periods for permitted shark dealers. Accordingly, the Assistant Administrator for Fisheries (AA) has determined that the LCS quota for the first 2002 semiannual season will likely be attained by April 15, 2002. Thus, the LCS fishery will close April 15, 2002, at 11:30 p.m. local time.

When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closure at the Office of the Federal Register at least 14 days before the effective date.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under 50 CFR 635.4. The sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under 50 CFR 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Catch Limits

The existing prohibited species provisions in 50 CFR part 635 will remain in effect. A list of prohibited shark species can be found in Table 1 of Appendix A to part 635, subpart D. In addition, the limited access provisions for commercial harvests will remain in effect, including trip limits for directed and incidental limited access shark permit holders.

Those vessels that have not been issued a limited access permit under 50 CFR 635.4 may not sell sharks and are subject to the recreational size limits and retention limits specified at 50 CFR 635.20(e) and 635.22(c), respectively. The recreational fishery is not affected by any closure in the commercial fishery.

Comment Period

NMFS is accepting comments regarding this emergency rule for 90 days through March 28, 2002. Comments on these management measures were also requested in an emergency rule published on March 6, 2001 (65 FR 13441). NMFS expects new LCS and SCS stock assessments to be completed in early 2002. Based on these stock assessments and any comments received on this rule, NMFS will modify these regulations through a standard rulemaking process as appropriate.

Classification

These emergency regulations are published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The AA has determined that these emergency regulations are necessary to ensure that regulations in force are consistent with the court-approved settlement agreement and with the best available science, which at this time is considered to be the recommendations of the 1996 stock assessment in combination with current landings data and the individual peer reviews of the 1998 stock assessment.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact on the human environment would result. This emergency rule is of limited duration. The quota levels established in this rule are based on stock assessment results that found these levels were appropriate to maintain the stocks pending implementation of a rebuilding plan. While the most recent 1998 LCS stock assessment indicated that maintaining these quota levels could result in further stock declines, the results of the independent peer review indicate that some of the techniques and data used in the 1998 LCS stock assessment were not appropriate and that models used in earlier stock assessments should have been re-assessed and utilized if appropriate. Thus, applying the results and recommendations of earlier assessments pending new LCS and SCS assessments is the appropriate action to conserve Atlantic sharks, ensure the long-term sustainability of shark fisheries, and ensure management of Atlantic sharks is based on the best available science.

NMFS also prepared a Regulatory Impact Review for this action which assesses the economic costs and benefits of the action. Because the fishing quotas and the catch accounting/ monitoring procedures for the LCS or SCS fisheries, as adopted in the HMS FMP and its implementing regulations, have been thus far enjoined by court order and later by the settlement agreement, maintaining the 1997 management measures for the duration of this emergency rule will not change the

current economic benefits or costs associated with the fisheries. Similarly, because the recreational retention limit has been in place since 1999 and because of the relatively short duration of this emergency rule, these management measures will not change the current economic benefits or costs associated with the recreational fisheries.

This emergency rule to establish the 2002 landings quotas and other shark management actions has been determined to be not significant for the purposes of Executive Order 12866.

Additionally, the ancillary action announcing the fishing season is taken under 50 CFR 635.27(b) and is exempt from review under Executive Order 12866.

Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply; thus, no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). It would be impracticable to provide prior notice and opportunity for comment because it would prevent the agency from meeting the requirements of a court-approved settlement agreement, and ensuring that management measures in place at the beginning of the 2001 shark fishing season (January 1, 2002) are based on the best available science. If these regulations are not in place at the beginning of the 2001 shark fishing season then more restrictive management measures (e.g. lower annual landings quotas and measures to count dead discards against that lower quota) that could significantly impact the fishery, and that currently lack an adequate scientific basis, would be in place. Comments received on this emergency rule will be considered by NMFS when determining whether to extend this emergency rule for another 180 day period and during development of a new rule. The public will have additional opportunities to comment on these or similar measures during the next rulemaking process expected shortly after completion of the new stock assessments that are anticipated in early 2002.

The AA, under 5 U.S.C. 553(d)(3), also finds that there is good cause to waive the 30-day delay in the effective date of this emergency rule, as is normally required. The AA finds that this measure is necessary to meet the requirements of the court-approved settlement agreement and to achieve the agency's goals, as described herein. Given NMFS's ability to communicate these regulations to fishing interests rapidly through the HMS Fax network, NOAA weather radio, press releases, mailing lists, and the HMS Infoline, the fact that the public has had notice about the settlement agreement and its possible effects since December 2000, and the fact that the management measures implemented in this emergency rule are less restrictive than the management measures currently in effect, the AA believes that affected fishermen and other interested persons will have sufficient and timely notice of this action.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 19, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for 50 CFR part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

§ 635.20 [Amended]

2. In § 635.20, paragraph (e)(1) is suspended.

3. In § 635.27, paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iv)(A) and (b)(1)(iv)(C) are suspended, and paragraphs (b)(1)(iv)(D), (b)(1)(v), and (b)(1)(vi) are added to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(D) NMFS will adjust the next year's corresponding semiannual quota for pelagic sharks to reflect actual landings during any semiannual period. NMFS will adjust the semiannual quota for large coastal and small coastal sharks to reflect actual landings during the previous semiannual period. Such adjustment shall be an increase or decrease equivalent to the amount of underharvest or overharvest. NMFS will file, for publication in the **Federal Register**, notification of any adjustment at least 30 days prior to the start of the next fishing season.

(v) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 1,285 mt dw, divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual large coastal shark season is 642.5 mt dw unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(iv) of this section. The length of each large coastal shark season will be determined based on the projected catch rates, available quota, and other relevant factors. NMFS will file, for publication in the **Federal Register**, notification of the length of each season for large coastal sharks at least 30 days prior to the beginning of the season.

(vi) *Small coastal sharks.* The annual commercial quota for small coastal sharks is 1,760 mt dw, divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual small coastal shark season is 880 mt dw unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(iv) of this section.

* * * * *

4. In § 635.28, paragraph (b)(1) is suspended, and paragraph (b)(4) is added to read as follows:

§ 635.28 Closures.

* * * * *

(b) * * *

(4) The commercial fishery for large coastal sharks will remain open for fixed semiannual fishing seasons, as specified at § 635.27(b)(1)(v). From the effective date and time of a season closure until additional quota becomes available, the fishery for large coastal sharks is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

* * * * *

[FR Doc. 01–31832 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010208032–1109–02; I.D. 121901B]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota transfer; fishery reopening.

SUMMARY: NMFS announces that the State of Maine, the Commonwealth of Massachusetts, the State of Connecticut, the State of Florida, and the State of Maryland have transferred a total of 434,000 lb (196,859 kg) of commercial bluefish quota to the State of North Carolina from their respective 2001 quotas. NMFS also announces that the Commonwealth of Massachusetts has transferred 100,000 lb (45,359 kg) of commercial bluefish quota to the State of New York from its 2001 quota. NMFS has adjusted the quotas and announces the revised commercial quotas of Atlantic bluefish for each state involved, and announces the reopening of the commercial bluefish fishery in New York. This action is permitted under the regulations implementing the Fishery Management Plan for the Bluefish Fishery (FMP) and is intended to reduce discards and economic impacts in the North Carolina commercial bluefish fishery.

DATES: Effective December 21, 2001 through December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, (978) 281–9103, fax (978)281–9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.160. The initial total commercial quota for bluefish for the 2001 calendar year was set equal to 9,583,010 lb (4,348,008 kg) (66 FR 23625, May 9, 2001). The resulting quota for North Carolina was 3,072,386 lb (1,394,005 kg), for New York was 995,204 lb (451,417 kg), for Maine was 64,062 lb (29,066 kg), for Connecticut was 121,350 lb (55,059 kg), for Florida was 964,021 lb (437,396 kg), for Virginia was 1,138,412 lb (516,521 kg) and for Maryland was 287,662 lb (130,518 kg).The commercial quota for North Carolina was attained and the fishery closed on May 15, 2001 (May 16, 2001; 66 FR 27043). Through a quota transfer from the State of Maryland, the Commonwealth of Virginia, and the State of Florida, the Atlantic bluefish fishery in North Carolina was reopened on August 2, 2001 (August 7, 2001; 66 FR 41151). As a result of this quota transfer, the revised quotas for the calendar year 2001 were: Maryland, 187,662 lb (85,122 kg); Virginia, 838,412 lb (380,405 kg); Florida, 664,021 (301,195 kg); and North Carolina, 3,772,386 lb (1,711,126 kg).

The commercial quota for the State of New York was adjusted effective November 15, 2001, by means of a quota transfer of 100,000 lb (45,359 kg) from the Commonwealth of Virginia (November 15, 2001; 66 FR 57398). The revised quota for the 2001 calendar year for the State of New York was 1,095,204 lb (496,784 kg), and for Virginia was 738,412 lb (335,045 kg). However, this revised quota was exceeded, and the commercial bluefish fishery in New York closed effective December 3, 2001 (December 4, 2001; 66 FR 63003).

The final rule implementing Amendment 1 to the FMP was published on July 26, 2000 (65 FR 45844), and allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), to transfer or combine part or all of their annual commercial quota. The Regional Administrator must consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Maine, Massachusetts, Connecticut, Florida, and Maryland have agreed to transfer 64,000 lb (29,030 kg), 100,000 lb (45,359 kg), 70,000 lb (31,751 kg), 100,000 lb (45,359 kg), and 100,000 lb (45,359 kg) of their respective 2001 commercial quotas to North Carolina. In addition, the Commonwealth of Massachusetts has agreed to transfer 100,000 lb (45,359 kg) of its 2001 commercial quota to New York. The Regional Administrator has determined that the criteria set forth in §648.160(f)(1) have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 2001 are: Maine 62 lb (28 kg); Massachusetts 443,661 lb (201,241 kg); Connecticut 51,350 lb (23,292 kg); New York, 1,195,204 lb (542,135 kg); Florida, 564,021 lb (255,836 kg); Maryland, 87,662 lb (39,763 kg); and North Carolina 4,206,386 lb (1,907,985 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 1 to the FMP regarding the effects of bluefish fishing activity on the human environment. Amendment 1 established procedures for setting an annual coastwide commercial quota for bluefish and a formula for determining the commercial quota for each state. Amendment 1 also established the quota transfer provision. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 20, 2001.

Jonathan Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–31966 Filed 12–21–01; 2:27 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 249
Friday, December 28, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 98–062–1]

Update of Nursery Stock Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for importing nursery stock to require additional certifications for imported niger seed and lilac, to reflect recent changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. We are also proposing several other amendments to update and clarify the regulations and improve their effectiveness. This action is necessary to update the existing regulations and make them easier to understand and implement.

DATES: We will consider all comments that we receive by February 26, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–062–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–062–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 98–062–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; fax (301) 734–5007.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

We are proposing to make several amendments to the regulations. Our proposed amendments are discussed below by topic.

Changes in Taxonomy

Chrysanthemum

The regulations at §§ 319.37–2(a), 319.37–5(c), and 319.37–7 prohibit or restrict the importation of plants of the genus *Chrysanthemum* from several countries and localities due to a disease known as chrysanthemum white rust (CWR), which is caused by the fungus *Puccinia horiana.* The taxonomy of the genus *Chrysanthemum* has recently changed. As a result of this change, only three species of plants are now assigned to the genus *Chrysanthemum,* and none of those species are hosts of CWR. Those plants that formerly belonged to the genus *Chrysanthemum* and that are known hosts of CWR have been assigned to the genera *Ajania, Dendranthema, Leucanthemella,* and *Nipponanthemum.* We are, therefore, proposing to amend the regulations in § 319.37–2(a), § 319.37–5(c), and § 319.37–7 to reflect those changes by removing restrictions on articles of the genus *Chrysanthemum,* and adding restrictions on articles of the genera *Ajania, Dendranthema, Leucanthemella,* and *Nipponanthemum.* These proposed changes are intended only to reflect changes in taxonomy and would not result in any new plant varieties being subject to restrictions on entry.

Datura from Colombia

The regulations at §§ 319.37–2(a) and 319.37–7(a)(3) prohibit or restrict the importation of plants of the genus *Datura* from Colombia because of the existence of the Datura Colombian virus. The taxonomy of *Datura* has recently changed, and the woody *Datura* spp. that are known to host the Datura Colombian virus have been assigned to the genus *Brugmansia.* We are, therefore, proposing to replace the entries for *Datura* spp. from Colombia in the list of prohibited articles in § 319.37–2(a) and the list of restricted articles in § 319.37–7(a)(3) with entries for *Brugmansia* spp. from Colombia. *Datura* spp. from India would still be prohibited importation into the United States due to the existence of Datura distortion (enation mosaic virus) in India.

New and Revised Treatment Conditions

Treatments Performed Outside the United States

Section 319.37–13 specifies conditions and costs associated with the application of treatments performed in the United States. We are proposing to add a new paragraph (c) to § 319.37–13 to specify conditions associated with treatments that are required by our regulations and that are performed outside the United States.

Proposed new paragraph (c) would require treatments performed outside the United States to be monitored and certified by an inspector of the Animal and Plant Health Inspection Service (APHIS) or an official of the plant protection service of the country exporting the regulated articles to the United States. If an official of the exporting country monitors and certifies treatment, paragraph (c) would also require that the official issue a

phytosanitary certificate that includes a declaration that the regulated articles have been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1(a). (If an APHIS inspector monitors and certifies treatment, the inspector would issue a Plant Protection and Quarantine Form 203, ''Foreign Site Certificate of Inspection and/or Treatment,'' to certify the treatment.) In addition, paragraph (c) would require the regulated articles to be stored and handled during the time between treatment and exportation to the United States in a manner that prevents infestation by pests and Federal noxious weeds. The proposed changes would provide a mechanism that allows for the certification of treatment of regulated articles by either APHIS inspectors or plant protection officials of exporting countries. The current regulations only provide for the certification of treatments by APHIS inspectors.

Treatment of Niger Seed

Under the regulations at § 319.37–6(d), seeds of *Guizotia abyssinica* (niger) are required to be heat treated in accordance with the PPQ Treatment Manual for possible infestation with *Cuscuta* spp. (dodder) seeds at the time of arrival at the port of first arrival in the United States. *Cuscuta* spp. are Federal noxious weeds. Niger seed, however, may be contaminated with the seeds of other Federal noxious weeds, including *Asphodelius fistulosus* Linnaeus (onion weed), *Digitaria* spp. (includes African couchgrass), *Oryza* spp. (red rice), *Paspalum scrobiculatum* Linnaeus (kodo millet), *Prosopis* spp. (includes mesquites), *Solanum viarum* Dunal (tropical soda apple), *Striga* spp. (witchweed), and *Urochloa panicoides* Beauvois (liver-seed grass). The currently prescribed treatment is not effective against those additional noxious weed seeds. We are, therefore, proposing to adopt a new treatment for niger seed that has been demonstrated to be effective against these other contaminants. We would amend the PPQ Treatment Manual to provide that imported niger seed must be heat treated at 248 °F (120 °C) for 15 minutes.

We are also proposing to amend the regulations to allow niger seed to be imported into the United States if it is heat treated prior to shipment to the United States in accordance with the PPQ Treatment Manual at a facility that has been approved by APHIS. The facility would be required to operate in compliance with a written agreement with the plant protection service of the exporting country, in which the treatment facility owner agrees to (1) comply with the applicable APHIS regulations and treatment requirements and (2) allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. We would also require that the treatment be conducted in accordance with the conditions described in proposed § 319.37–13(c) which, as noted above, would provide for the certification of treatment and the safeguarding of treated articles when treatments are performed outside the United States.

In order to be approved by APHIS as a niger seed heat treatment facility, facilities would be required to meet the following minimum standards and specifications:

- A minimum of two temperature probes must be situated in the heat treating equipment in such a way as to determine that all niger seed being treated reaches the target temperature.
- The temperature recording chart must show changes in temperature in increments of not less than 0.1 inch for each degree Fahrenheit or 5 mm for each degree Celsius.
- Temperature readings must be recorded on a chart at time intervals not to exceed 4 minutes between each reading.
- Accuracy of the total temperature recording system must be within plus or minus 0.5 °F (0.3 °C) of the actual temperatures as recorded by a certified calibrated thermometer.
- A speed indicator must be present for continuous flow systems.
- All the valves and controls that affect heat flow to the treatment system must be secured to avoid manipulation by unauthorized personnel during the treatment process.
- Heating controls must be automatic and run continuously throughout the treatment process. Manual adjustments are allowed, if necessary.
- Gear systems used to control used to control the niger seed conveyer (if applicable) must be capable of being adjusted as necessary to meet treatment requirements.
- An audible alarm or highly visible light must be installed on burners or other equipment to indicate system failure and/or when the system is not operating properly.
- An action plan must be established to address any pests that may be associated with the storage, treatment, or shipment of niger seed.
- Proper sanitation measures must be implemented to ensure that there are no potential breeding grounds for pests on the premises, and therefore, little risk of reinfestation or cross-contamination.
- Treated seeds must be stored in a location separate from nontreated seeds. The treated and nontreated seeds must be handled in a manner to prevent cross-contamination.
- Seed processing equipment must have the capability to divert for retreatment any nontreated or treated seeds that do not meet treatment standards.

The above standards and specifications would be included in the PPQ Treatment Manual, along with additional specific information regarding treatment procedures and the certification process. We would include a footnote in § 319.37–6(d)(2) stating that the approval criteria may be found in the PPQ Treatment Manual. Interested persons may obtain this additional information by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Treatment of Lilac From The Netherlands

The regulations at § 319.37–5(i) prohibit the importation of plants of the genera *Syringa* (lilac) from The Netherlands unless, at the time of arrival in the United States, the phytosanitary certificate accompanying the plants contains a declaration stipulating that: (1) The plants' parent stock was found free of plant diseases by inspection and indexing, (2) the plants were propagated either by rooting cutting from indexed parent plants or by grafting indexed parent plant material on seedling rootstalks, and (3) the plants were grown in soil that was fumigated with methyl bromide according to certain conditions. The Government of The Netherlands has requested that APHIS provide an alternative to treating the soil with methyl bromide, since methyl bromide is no longer allowed to be used in The Netherlands.

We currently require the soil to be fumigated with methyl bromide to ensure it does not contain live viruliferous nematodes. Soil that does not contain any viruliferous nematodes also would be safe, and we believe this could be determined through microscopic inspection of the soil. Therefore, as an alternative to fumigating the soil with methyl bromide, we are proposing to allow the soil to be certified free of viruliferous nematodes and other plant pests by the plant protection service of The Netherlands. For this certification to be valid, we would require that the soil be sampled and microscopically inspected by the plant protection service of The Netherlands within 12 months

preceding the issuance of the certification. We are proposing this requirement because we believe that soil that is sampled and inspected annually would not present a significant risk of being infested with nematodes.

Changes in Pest Distributions

Peanut Stripe Virus

The regulations at § 319.37–2(a) prohibit the importation of seeds of the genus *Arachis* (peanut) from India, Indonesia, Japan, the People's Republic of China, the Philippines, Taiwan, and Thailand due to the existence of peanut stripe virus in those regions. We are proposing to remove the prohibition on the importation of peanuts from all of those regions except India because the peanut stripe virus is now reported to occur in seven of the nine peanut-producing States in the United States, and is widely prevalent in two of those States (Georgia and Virginia). The importation into the United States of peanuts from India would still be prohibited due to the existence of the Indian peanut clump virus in India.

Mango Seed Weevil

The regulations at § 319.37–2(a) prohibit the importation of seeds of *Mangifera* spp. (mango) from certain regions due to the existence of the mango seed weevil, *Sternochetus mangiferae,* in those regions. We are proposing to also prohibit the importation of mango seeds from the British Virgin Islands, Grenada, St. Vincent and the Grenadines, and Trinidad and Tobago due to recent reports that the mango seed weevil exists there. Currently, the mango seed weevil exists in Guam, Hawaii, and the Northern Mariana Islands. Since there is no program in place to control the mango seed weevil in any of those areas, we would not restrict the movement of mango seeds into Guam, Hawaii, and the Northern Mariana Islands.

We are also proposing to allow the importation of mango seeds from Guimaras Island in the Republic of the Philippines due to the fact that neither the mango seed weevil, nor any other quarantine pest of mango seeds, exists on that island.

Watermark Disease of Willow

The regulations at §§ 319.37–2(a) and 319.37–7(a)(3) prohibit or restrict the importation of plants of the genus *Salix* (willow) from the Federal Republic of Germany (West), German Democratic Republic (East), Great Britain, and The Netherlands due to the existence of watermark disease of willow, *Erwinia salicis,* in those regions. We are proposing to also prohibit the importation of willow plants from Belgium and Japan due to recent reports that watermark disease of willow exists in those regions. Currently, watermark disease of willow does not exist in the United States. We are also proposing to remove references to the former East and West Germany and refer instead to Germany.

Citrus Canker

The regulations at § 319.37–6(e) provide that seeds of all species of the plant family *Rutaceae* from certain countries must be treated under certain conditions at the time of arrival at the port of first arrival in the United States for possible infection with citrus canker.

We are proposing to require the same treatment upon arrival for *Rutaceae* seeds from Gabon and Iran because citrus canker is reported to occur in each of those regions. Currently, citrus canker exists in the United States only in a portion of the State of Florida, where there is an eradication program underway.

Postentry Quarantine Regulations

Growing Agreements

The regulations at § 319.37–7(d) require that a person who wishes to grow a restricted article under postentry quarantine must enter into a postentry quarantine growing agreement with APHIS. Under the regulations, growers who enter into such growing agreements may only grow a restricted article or increase from that article on certain premises, under certain conditions, and may only move, propagate, or allow propagation of the restricted articles with the written permission of an APHIS inspector.

We are proposing to amend the regulations to require that growers obtain permission to move, propagate, or allow propagation of a restricted article not from an APHIS inspector, but from the coordinator, Postentry Quarantine Unit, APHIS. We are proposing this change in order to make it clear who gives permission to move or increase plants in postentry quarantine.

States With Growing Agreements

Under the regulations at § 319.37–7(c), articles required to undergo postentry quarantine under § 319.37–7 may only be imported into a State that has entered into a written agreement with APHIS. Paragraph (c)(1)(i) of § 319.37–7 is established as the location for the list of States that have entered into such agreements with APHIS, but does not currently list any States. As of the drafting of this proposed rule, all U.S. States and Territories except the District of Columbia, Guam, Hawaii, and the Northern Mariana Islands have entered into written postentry quarantine agreements with APHIS. Therefore, we are proposing to amend § 319.37–7(c)(1)(i) to indicate that all U.S. States and Territories except those cited in the previous sentence have entered into written postentry quarantine agreements with APHIS.

Requirements for the Importation of Hops

The regulations at § 319.37–7(a) restrict the entry of plants of the genus *Humulus* (hops) from all foreign countries due to the existence of several foreign plant diseases known to affect hops. One such disease is the hops powdery mildew (HPM), which is caused by the fungus *Sphaerotheca macularis.* HPM currently exists in the United States in Idaho, Oregon, and Washington.

We are proposing to add a requirement in § 319.37–7(d)(7)(iii) that a meristem culture of any imported hops plant must be grown and observed for 6 months in an isolated growth chamber in postentry quarantine. After 6 months, once the meristem culture has been established, the original plant would have to be destroyed, and the meristem culture would have to be grown in postentry quarantine for an additional year. This requirement would provide time for any symptoms of disease to become visible to inspectors. We are proposing this action to protect against the introduction of additional strains or biotypes of HPM into the United States.

Arrangement of Plants

The regulations at § 319.37–7(d)(4) require restricted articles that are grown in postentry quarantine to be kept 3 meters (approximately 10 feet) apart from: (1) Any domestic plant or plant product of the same genus and (2) any other imported plant or plant product.

We are proposing to require restricted articles that are grown in postentry quarantine to be kept 3 meters apart from any other plant or plant product, whether domestic or imported, regardless of genus, unless the plants or plant products: (1) Are of the same genus, (2) enter postentry quarantine together, and (3) arrived together in a single shipment from a foreign region. This change would protect against the possibility that pests could spread from one shipment of plants under postentry quarantine to other plants or plant products, regardless of genera, that could host such pests.

Prohibited Articles Listed as Subject to Postentry Quarantine

The regulations in § 319.37–7 require articles of the genus *Ribes* from New Zealand to be grown in postentry quarantine upon entry into the United States. Since the regulations in § 319.37–2(a) currently prohibit the importation of articles of the genus *Ribes* from New Zealand due to the black currant reversion agent, we are proposing to correct the error in § 319.37–7.

Also, the regulations at § 319.37–7(b) list fruits and nuts, including articles of the genus *Phoenix* (date), as articles subject to postentry quarantine. However, *Phoenix* spp. articles are currently listed as prohibited articles in § 319.37–2(a) of the regulations and should not be listed as articles subject to postentry quarantine. Therefore, we are proposing to remove the entry for *Phoenix* from the list in § 319.37–7(b) of fruits and nut articles subject to postentry quarantine.

Labeling Requirements for Greenhouse-Grown Plants From Canada

The regulations at § 319.37–4(c) govern the importation of greenhouse-grown plants from Canada. Among other things, § 319.37–4(c) requires that the Plant Protection Division, Agriculture Canada, issue labels to each grower participating in the program. The labels must bear a unique number identifying the grower and bear the following statement: ''This shipment of greenhouse-grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by the Plant Protection Division, Agriculture Canada.'' Under § 319.37–4(c), growers must apply these labels to each carton of plants to be shipped to the United States and to an airway bill, bill of lading, or delivery ticket. Paragraph (c) of § 319.37–4 also requires that the Plant Protection Division of Agriculture Canada ensure that the label is placed on the outside of each container of plants and that the grower's label is placed on the airway bill, bill of lading, or delivery ticket accompanying each shipment of articles.

We are proposing to remove the requirement that the label be applied to each carton or container of plants. We believe that it is sufficient to place the label containing that information on the airway bill, bill of lading, or delivery ticket accompanying the shipment of plants. We are also proposing to update references to the Plant Protection Division of Agriculture Canada in § 319.37–4(c) to reflect the reorganization of the agency. Agriculture Canada is now the Canadian Food Inspection Agency and the Plant Protection Division is now the Plant Health and Production Division.

Risk Assessments for Plants Established in Growing Media

The regulations at § 319.37–8(g) provide pest risk evaluation standards to be used by APHIS to evaluate requests to allow additional taxa of plants established in growing media to be allowed importation into the United States. These guidelines generally follow the pest risk analysis guidelines established by the International Plant Protection Convention (IPPC) of the United Nations' Food and Agricultural Organization. The IPPC pest risk analysis guidelines are the international standards for conducting pest risk analyses. As an IPPC member country, the United States is obligated to conduct pest risk analyses in accordance with IPPC guidelines.

The existing standards were made effective in February 1995, and have been amended since. Therefore, in order to bring the regulations up to date with current procedure, we are proposing to remove the existing standards in § 319.37–8(g) and add in their place a statement that APHIS will evaluate requests to allow the importation of additional taxa of plants in growing media in accordance with IPPC pest risk analysis guidelines. These guidelines are available by writing to USDA, APHIS, PPQ, Permits and Risk Assessment, Commodity Risk Analysis Branch, 4700 River Road Unit 133, Riverdale, MD 20737, or on the Internet at: *http://www.aphis.usda.gov/ppq/pra/commodity/cpraguide.pdf.*

Commercial Shipments of Bulbs

The regulations at § 319.37–2(a) prohibit the importation of plants of the genera *Crocosmia, Gladiolus,* and *Watsonia* from Africa, Brazil, France, Italy, Malta, Mauritius, and Portugal because of *Uromyces transversalis* (Theum.), commonly known as gladiolus rust, which is known to exist in those countries. However, recent research evaluated by APHIS shows that bulbs of *Crocosmia* spp., *Gladiolus* spp., and *Watsonia* spp. that are commercially packaged and processed prior to shipment to the United States present a low risk of carrying *U. transversalis.* We are, therefore, proposing to remove the prohibition in § 319.37–2(a) on the importation of bulbs of *Crocosmia* spp., *Gladiolus* spp., and *Watsonia* spp. in commercial shipments from Brazil, France, Italy, Malta, Mauritius, and Portugal. The importation into the United States of commercial shipments of bulbs of *Crocosmia* spp., *Gladiolus* spp., and *Watsonia* spp. from Africa would still be prohibited due to the existence of several other varieties of rust in Africa.

Approved Growing Media

The regulations at § 319.37–8(e)(1) list approved growing media for plants that are allowed to be imported in growing media. We are proposing to add coal cinder, coir, Stockosorb superabsorbent polymer, and zeolite to the list of approved growing media in § 319.37–8(e)(1). We have inspected each of these types of growing media and reviewed their respective manufacturers' specifications. Based on our inspection and review of the media's specifications, we have determined that the media are sterile and would not present new pathways for plant pests to enter the United States.

Approved Packing Material

The regulations at § 319.37–9 list approved packing material for imported plants. We are proposing to add stockosorb superabsorbent polymer to the list of approved packing material in § 319.37–9. We have inspected the material and reviewed its manufacturers' specifications. Based on our inspection and review of the material's specifications, we have determined that the material is sterile and would not present a new pathway for plant pests to enter the United States.

Ports of Entry

The regulations at § 319.37–14 list Federal plant inspection stations and ports of entry for plants offered for importation into the United States. Federal plant inspection stations are ports that have the capacity to process importations of restricted articles that are required to be accompanied by a written permit under the regulations in § 319.37–3(a)(1) through (6), as well as any other imported plants or plant products. Other ports of entry cannot process shipments of plants or plant products that are imported under permit as specified above.

We are proposing to remove El Paso, TX, from the list of ports of entry designated as plant inspection stations because the port of El Paso no longer has the facilities or resources necessary to operate as a Federal plant inspection station. The port of El Paso would continue to operate as a port of entry.

Editorial Changes

We are proposing to replace all references to the former ''Burma,''

''Ivory Coast,'' and ''Upper Volta'' that are contained in the regulations with references to ''Myanmar,'' ''Cote d'Ivoire,'' and ''Burkina Faso,'' respectively. We would also correct several typographical errors in the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments concerning potential economic effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

We are proposing to amend the regulations for importing nursery stock to require additional certifications for imported niger seed and lilac, to reflect recent changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. We are also proposing several other amendments to update and clarify the regulations and improve their effectiveness. The potential effects of the changes proposed in this document are discussed below, by topic.

Treatment of Niger Seed

We are proposing to amend the regulations to allow niger seed to be imported into the United States if it is treated at a treatment facility that has been approved by APHIS. Under this proposed amendment, niger seed could be treated: (1) At the time of arrival at the port of first arrival in the United States or (2) prior to shipment to the United States at a treatment facility that has been approved by APHIS. Currently, the regulations in § 319.37–6(d) state that imported niger seed must be heat treated upon arrival in the United States.

This proposed change could potentially affect U.S. firms that import and treat niger seed. The treatment firms could suffer a loss in revenue, but we believe that there are only two such firms in the United States, and at least one of those firms is not small in size according to Small Business Administration (SBA) criteria. It is likely that the other treatment firm, whose size is unknown, may not be significantly affected, because niger seed treatment likely accounts for only a small portion of the firm's overall revenues. However, since we are unable to estimate the amount of niger seed that would be treated prior to shipment to the United States, we cannot determine the effect this proposed rule would have on domestic firms that treat niger seed.

As a group, importers in the United States would likely be unaffected by this proposed change, since it would not likely affect the overall volume of niger seed imported into the United States. However, the proposed change could result in new marketing and distribution channels that could benefit some importers at the expense of others. We estimate that there are fewer than 20 importers of niger seed in the United States. However, data on the importers' size are not available, although we expect at least some of the importers are likely to be small according to SBA criteria.

We are also proposing to amend the regulations to revise the heat treatment required for imported niger seed. However, since the revised treatment would only involve a change in the required treatment temperature, and no change in the type or duration of the treatment, we anticipate that existing treatment facilities would not be affected by the proposed new treatment.

Lilac From The Netherlands

This proposed rule would allow the importation of lilac from The Netherlands under new conditions due to The Netherlands' request for an alternative to the use of methyl bromide as a fumigant of soil for lilac to be exported to the United States. This change should have no effect on the volume of lilac imported from the Netherlands since it simply provides a new mechanism for Dutch exporters to ship lilac without fumigating the soil in which it is grown with methyl bromide and, therefore, should have no effect on U.S. entities, whether small or large.

Peanuts From Certain Countries

This proposed rule would allow the importation of peanuts from Indonesia, Japan, the People's Republic of China, the Philippines, Taiwan, and Thailand. The importation of peanuts from those countries has been prohibited due to the existence of the peanut stripe virus. Because the peanut stripe virus is now known to exist in several U.S. peanut-producing States, and is widely prevalent in Georgia and Virginia, we are proposing to remove the restrictions on the entry of peanuts from those countries.

China is the world's largest peanut producer. In the 1996 to 1997 harvest season, China produced about 6 times more peanuts than the United States, which was the world's fourth largest peanut producer during that period (India and Nigeria were the second and third largest producers, respectively). For the year beginning October 1, 1997, the United States imported 141 million pounds of peanuts, equivalent to only 4 percent of domestic peanut production. The United States is a net exporter of peanuts, exporting almost five times as many peanuts as it imports.

This proposed change should have little or no effect on U.S. consumers, producers, or importers because it is unlikely that a significant volume of peanuts would be imported into the United States, since the imported peanuts likely cannot compete with higher quality peanuts produced in the United States.

Mango Seeds From the British Virgin Islands, Grenada, Trinidad and Tobago, and St. Vincent and the Grenadines

This proposed rule would prohibit the importation of mango seeds from the British Virgin Islands, Grenada, Trinidad and Tobago, and St. Vincent and the Grenadines due to the risk of introducing the mango seed weevil, *Sternochetus mangiferae,* into the United States. This proposed change should have little or no effect on U.S. consumers, importers, or producers, due to the fact that the United States has historically imported a very small volume of mangoes and mango seeds from those countries. Between September 1, 1997, and May 31, 1998, the value of U.S. imports of fresh mangoes (with seeds intact) from Trinidad and Tobago and Grenada was approximately $20,000, or approximately 1 percent of the value of U.S. fresh mango imports from all countries combined during that period. During the same period, the United States imported no mangoes or mango seeds from St. Vincent and the Grenadines. Data on imports of mango seeds or fruit from the British Virgin Islands are not available. Furthermore, the United States imported no seeds,

fruit, or spores for propagation from Trinidad and Tobago in 1997.

Willow From Belgium and Japan

This proposed rule would prohibit the importation of willow plants and plant parts from Belgium and Japan due to the risk of introducing the watermark disease of willow into the United States.

The United States has historically imported a very small volume of willow plants and plant parts from Belgium and Japan. The value of live trees and plants, including willow plants, imported into the United States from Belgium and Japan in 1997 totaled only $3 million, or less than 1 percent of the value of U.S. live tree and plant imports from all countries combined that year. Since willow plants compose only a small fraction of the plants imported from Belgium and Japan, this proposed change should have little or no effect on U.S. consumers, importers, or producers.

Citrus Seeds From Gabon and Iran

This proposed rule would require that seeds of all species of the plant family Rutaceae (citrus) from Gabon and Iran be treated for citrus canker upon arrival in the United States. This proposed change should have no effect on U.S. consumers, producers, or importers, since imports of Rutaceae (citrus) from the two affected countries are nonexistent. Trade data for 1995 to 1997 show no U.S. imports of citrus fruit (fresh or dried) or seeds, fruit, or spores for propagation from either of the two regions.

Growing Requirements for Hops

This proposed rule would require that imported hops plants and plant parts be grown and observed in postentry quarantine in an isolated growth chamber for 6 months, and then transferred to a greenhouse to be grown for an additional year.

Researchers and universities comprise the overwhelming bulk of entities in the United States that grow imported hop plants and plant parts. The proposed change should have little or no effect on researchers, since most already have the equipment and facilities to comply with the proposed rule's requirements. Accordingly, for most of the affected entities, the cost to comply with the proposed requirements should be minimal.

Commercial Shipments of Bulbs

This proposed rule would allow the importation of bulbs of the genera *Crocosmia, Gladiolus,* and *Watsonia* in commercial shipments from Brazil, France, Italy, Malta, Mauritius, and Portugal.

In 1998, the United States imported over $175 million worth of bulbs and tubers. Imports from Brazil, France, Italy, Malta, Mauritius, and Portugal together accounted for less than 1 percent of the total bulb and tuber imports. Data on potential imports of bulbs that would result from this proposed change are not available. However, given the export history of the countries affected, it is unlikely that this change would have a significant impact on domestic bulb producers or bulb importers.

Additional Approved Growing Media and Packing Material

This proposed rule would add stockosorb superabsorbent polymer, zeolite, coir, and coal cinder to the list of growing media approved for the importation of certain plants.

This proposed change is not expected to result in increased U.S. imports of plants in growing media; the expected result is a redistribution of the existing volume of plant imports among a larger number of approved growing media. Accordingly, the proposed addition of these types of growing media should have no economic effect on U.S. consumers, producers, or importers.

This rule would also add stockosorb superabsorbent polymer to the list of approved packing material. We cannot determine what entities could be affected by this proposed change, but we believe that it would not likely have a significant economic effect on any U.S. entities.

List of Ports of Entry

This rule would amend the regulations to reflect that the port of El Paso, TX, no longer operates as a Federal plant inspection station. This port no longer operates as a plant inspection station because it does not have the capacity to perform treatments and provide the other services that are available at Federal plant inspection stations. We believe that this change would not have any significant impact on any U.S. entities, whether small or large.

Other Proposed Changes

We are also proposing to make several other amendments to the regulations, including changes in plant taxonomy, postentry quarantine protocol, labeling requirements, and risk assessment policy, as well as other editorial changes, which would not have any economic effects on U.S. entities, whether small or large.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–062–1. Please send a copy of your comments to: (1) Docket No. 98–062–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to amend the regulations for importing nursery stock to require additional certifications for imported niger seed and lilac, to reflect recent changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. We are also proposing several other amendments to update and clarify the regulations and improve their effectiveness. This action is necessary to update the existing regulations and make them easier to understand and implement.

These changes will necessitate the use of certain information collection activities, including the completion of phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Importers of nursery stock and foreign governments.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 10 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 300 and 319 as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through [date], has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. In § 319.37–2(a), the table would be amended as follows:

a. By adding, in alphabetical order, entries for ''*Ajania* spp.'', ''*Brugmansia* spp.'', ''*Chrysanthemum'', ''Crocosmia* spp.'', ''*Datura* spp. (woody species)'', ''*Gladiolus* spp.'', ''*Leucanthemum* spp.'', ''*Nipponanthemum* spp.'', and ''*Watsonia* spp.'' to read as set forth below.

b. By removing the entry for ''*Chrysanthemum* spp.''.

c. By revising the entries for ''*Abelmoschus* spp.'', ''*Aesculus* spp.'', ''*Arachis* spp.'', ''*Blighia sapida*'', ''*Crocosmia* spp.'', ''*Datura* spp.'', ''*Gladiolus* spp.'', ''*Jasminum* spp.'', ''*Mangifera* spp.'', ''*Salix* spp.'', ''*Sorbus* spp.'', and ''*Watsonia* spp.'' to read as set forth below.

d. In the entry for ''*Hydragea* spp.'', the word ''*Hydragea*'' would be corrected to read ''*Hydrangea*''.

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
Abelmoschus spp. (okra)	Africa	Cotton leaf curl agent.
	Brazil	Cotton Anthocyanosis agent.
	Bangladesh, India, Sri Lanka	Bhendi yellow vein mosaic agent.
	Cote d'Ivoire, Nigeria	Okra mosaic virus.
	Iraq	Okra yellow leaf curl agent.
	Papua New Guinea, Trinidad and Tobago	Okra mosaic agents.
* *	* * *	* *
Aesculus spp. (horsechestnut)	Czechoslovakia, Germany, Romania, United Kingdom..	Horsechestnut variegation or yellow mosaic diseases.
* *	* * *	* *
Ajania spp	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.	*Puccina horiana* P. Henn. (white rust of chrysanthemum).

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* *	* * *	* *
Arachis spp. (peanut) seed only (all other *Arachis* articles are included under Fabaceae).	Burkina Faso, Cote d'Ivoire, Senegal	Peanut clump virus.
	India	Indian peanut clump virus.
* *	* * *	* *
Blighia sapida (akee)	Cote d'Ivoire, Nigeria	Okra mosaic virus.
* *	* * *	* *
Brugmansia spp	Columbia	Datura Columbia virus.
* *	* * *	* *
Chrysanthemum	(See § 319.37–5(c)).	
* *	* * *	* *
Crocosmia spp. (montebretia)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Crocosmia spp. (montebretia), except bulbs in commercial shipments.	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal.	*U. transversalis* (Thuem.) Wint. (rust).
* *	* * *	* *
Datura spp	India	Datura distortion or enation mosaic virus.
Datura spp. (woody species)	(See *Brugmansia* spp.).	
* *	* * *	* *
Gladiolus spp. (gladiolus)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Gladiolus spp. (gladiolus), except bulbs in commercial shipments.	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal.	*U. transversalis* (Thuem.) Wint. (rust).
* *	* * *	* *
Jasminum spp. (jasmine)	Belgium, Germany, Great Britain	Jasmine variegation diseases.
	India	Chlorotic ringspot, phyllody, yellow ring mosaic diseases.
	Philippines	Sampaguita yellow ringspot mosaic diseases.
* *	* * *	* *
Leucanthemella spp	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.	*Puccina horiana* P. Henn. (white rust of chrysanthemum).
* *	* * *	* *
Mangifera spp. (mango) seed only. (Prohibition not applicable to seeds imported into Guam, Hawaii, and the Northern Mariana Islands.).	All except Guimaras Island (Republic of the Philippines) and North and South America (excluding Barbados, the British Virgin Islands, Dominica, French Guiana, Grenada, Guadeloupe, Martinique, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago).	*Sternochetus mangiferae* F. (mango seed weevil).

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* *	* * *	* *
Nipponanthemum spp	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude..	*Puccina horiana* P. Henn. (white rust of chrysanthemum).
* *	* * *	* *
Salix spp. (willow)	Belgium, Germany, Great Britain, Japan, and The Netherlands.	*Erwinia salicis* (Day) Chester (Watermark disease).
* *	* * *	* *
Sorbus spp. (mountain ash)	Czechoslovakia, Denmark, Germany	Mountain ash variegation or ringspot mosaic disease.
* *	* * *	* *
Watsonia spp. (bugle lily)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Watsonia spp. (bugle lily), except bulbs in commercial shipments.	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal.	*U. transversalis* (Thuem.) Wint. (rust).
* *	* * *	* *

5. In § 319.37–4, paragraph (c) would be amended as follows:

a. By revising the introductory text to read as set forth below.

b. By revising the introductory text of paragraph (c)(1) to read as set forth below.

c. By revising paragraph (c)(1)(iv) to read as set forth below.

d. By revising paragraph (c)(2) to read as follows:

§ 319.37–4 Inspection, treatment, and phytosanitary certificates of inspection.

* * * * *

(c) *Greenhouse-grown plants from Canada.* A greenhouse-grown restricted plant may be imported from Canada if the Plant Health and Production Division of the Canadian Food Inspection Agency (CFIA) signs a written agreement with the Animal and Plant Health Inspection Service allowing such importation, and provided that the following conditions are met:

(1) The Plant Health and Production Division of CFIA shall:

* * * * *

(iv) Issue labels to each grower participating in the program. The labels issued to each grower shall bear a unique number identifying that grower, and shall bear the following statement: ''This shipment of greenhouse-grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Health and Production Division, Canadian Food Inspection Agency.'' The Plant Health and Production Division, CFIA, shall also ensure that the label is placed on the airway bill, bill of lading, or delivery ticket accompanying each shipment of articles; and

* * * * *

(2) Each greenhouse grower participating in the program shall enter into an agreement with the Plant Health and Production Division of CFIA in which the grower agrees to:

(i) Maintain records of the kinds and quantities of plants grown in their greenhouses, including the date of receipt and place of origin of the plants; keep the records for at least 1 year after the plants are shipped to the United States; and make the records available for review and copying upon request by either the Plant Health and Production Division of CFIA or an authorized representative of the Secretary of Agriculture;

(ii) Apply to an airway bill, bill of lading, or delivery ticket for plants to be shipped to the United States a label issued by CFIA that includes the identification number assigned to the grower by the Plant Health and Production Division, CFIA, and the following certification statement: ''This shipment of greenhouse grown plants meets the import requirements of the United States and is believed to be free from injurious plant pests. Issued by Plant Health and Production Division, Canadian Food Inspection Agency.''; and

(iii) Use pest control practices approved by Plant Protection and Quarantine and the Plant Health and Production Division of CFIA to exclude pests from the greenhouses.

6. Section 319.37–5 would be amended by revising paragraphs (c) and (i) to read as follows.

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(c) Any restricted article (except seeds) of *Ajania* spp., *Dendranthema* spp., *Leucanthemella* spp., or *Nipponanthemum* spp. from any foreign place except Europe, Argentina, Brazil, Canada, the Canary Islands, Chile, Colombia, the Republic of South Africa, Uruguay, Venezuela, and all countries and localities located in part or entirely between 90° and 180° east longitude shall, at the time of arrival at the port of first arrival in United States, be accompanied by a phytosanitary

certificate of inspection. The phytosanitary certificate of inspection must contain a declaration that such article was grown in a greenhouse nursery and found by the plant protection service of the country in which grown to be free from white rust of chrysanthemum (caused by the rust fungus *Puccinia horiana* P. Henn.) based on visual examination of the parent stock, the articles for importation, and the greenhouse nursery in which the articles for importation and the parent stock were grown, once a month for 4 consecutive months immediately prior to importation.

* * * * *

(i) Any restricted article of *Syringa* spp. (lilac) from The Netherlands is prohibited as specified in § 319.37–2(a) unless, at the time of arrival at the port of first arrival in the United States, the phytosanitary certificate accompanying the article of *Syringa* spp. (lilac) contains a declaration that stipulates that the parent stock was found free of plant diseases by inspection and indexing and that the Syringa spp. (lilac) to be imported were propagated either by rooting cuttings from indexed parent plants or by grafting indexed parent plant material on seedling rootstocks, and were grown in:

(1) Fumigated soil (fumigated by applying 400 to 870 pounds of methyl bromide per acre and covering the soil with a tarpaulin for 7 days) in a field at least 3 meters from the nearest nonindexed *Syringa* spp. (lilac), or

(2) Soil that has been sampled and microscopically inspected by the plant protection service of The Netherlands within 12 months preceding issuance of the phytosanitary certificate and that has been found free of the viruliferous nematodes capable of transmitting European nepoviruses, including, but not limited to, the Arabis mosaic nepovirus.

* * * * *

7. Section 319.37–6 would be amended as follows:

a. By revising paragraph (d) to read as set forth below.

b. In paragraph (e), by removing the words ''Burma,'' and ''Ivory Coast,'' and by adding, in alphabetical order, the words ''Cote d'Ivoire,'' ''Gabon,'' ''Iran,'' and ''Myanmar,''.

§ 319.37–6 Specific treatment and other requirements.

* * * * *

(d) Seeds of *Guizotia abyssinica* (niger seed) are allowed entry only if:

(1) They are treated in accordance with the PPQ Treatment Manual at the time of arrival at the port of first arrival in the United States; or

(2) They are treated prior to shipment to the United States at a facility that is approved by APHIS [9] and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of this section and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. Treatments must be certified in accordance with the conditions described in § 319.37–13(c).

* * * * *

8. Section 319.37–7 would be amended as follows:

a. In the table in paragraph (a)(3), by adding, in alphabetical order, entries for ''*Ajania* spp.'', ''*Brugmansia* spp.'', ''*Chrysanthemum*'', ''*Datura* spp. (woody species)'', ''*Leucanthemella* spp.'', and ''*Nipponanthemum* spp.'' to read as set forth below.

b. In the table in paragraph (a)(3), by removing the entry for ''*Chrysanthemum* spp.''.

c. In the table in paragraph (a)(3), by revising the entries for ''*Aesculus* spp.'', ''*Blighia sapida*'', ''*Datura* spp.'', ''*Ribes* spp.'', and ''*Salix* spp.'' to read as set forth below.

d. In paragraph (b), by removing the entry for ''*Phoenix*—date''.

e. By revising paragraph (c)(1)(i) to read as set forth below and by adding and reserving paragraph (c)(1)(ii).

f. In paragraph (c)(2)(iv), by removing the words ''now know'' and adding the words ''not known'' in their place.

g. In paragraph (d)(1), by removing the words ''of an inspector and only to the extent prescribed by the inspector;'' and adding the words ''of the coordinator, Postentry Quarantine Unit, USDA, APHIS, PPQ, Building 580, BARC-East, Beltsville, MD 20705;'' in their place.

h. By revising paragraph (d)(4) to read as set forth below.

i. By revising paragraph (d)(7) to read as set forth below.

j. By removing paragraphs (d)(8) and (d)(9).

k. In paragraph (e), by redesignating footnote 9 and its reference in the text as footnote 10.

§ 319.37–7 Postentry quarantine.

(a) * * *

(3) * * *

Restricted articles (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
* *	* * * * * * *
Aesculus spp. (horsechestnut)	All except Canada, Czechoslovakia, Germany, Romania, and the United Kingdom.
* *	* * * * * * *
Ajania spp	All except Argentina, Brazil, Canary Islands, Chile, Columbia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.
* *	* * * * * * *
Blighia sapida (akee)	All except Canada, Cote d'Ivoire, and Nigeria.
* *	* * * * * * *
Brugmansia spp	All except Canada and Columbia.
* *	* * * * * * *
Chrysanthemum	See § 319.37–5(c).

[9] Criteria for the approval of niger seed treatment facilities are contained in the PPQ Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

Restricted articles (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
* *	* * * * * * *
Datura spp	All except Canada and India.
Datura spp. (woody species)	(See *Brugmansia* spp)
* *	* * * * * * *
Leucanthemella spp	All except Argentina, Brazil, Canary Islands, Chile, Columbia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.
* *	* * * * * * *
Nipponanthemum spp	All except Argentina, Brazil, Canary Islands, Chile, Columbia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.
* *	* * * * * * *
Ribes spp	All except Canada, Europe, and New Zealand.
* *	* * * * * * *
Salix spp. (willow)	All of Europe (except Belgium, Germany, Great Britain, and the Netherlands).
* *	* * * * * * *

* * * * *

(c) * * * (1) * * *

(i) The following States have entered into a postentry quarantine agreement in accordance with this paragraph: All U.S. States and Territories, except the District of Columbia, Guam, Hawaii, Kansas, and the Northern Mariana Islands.

(ii) [Reserved]

* * * * *

(d) * * *

(4) To keep the article separated from any other plant or plant product by no less than 3 meters (approximately 10 feet) unless such other plant or plant product is of the same genus as the article, entered postentry quarantine with the article, and arrived together with the article in a single shipment from a foreign region;

* * * * *

(7) To grow the article or increase therefrom in postentry quarantine for a period of 2 years unless specified otherwise in the following:

(i) To grow the article or increase therefrom, if an article of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Europe, only in a screenhouse with screening of a minimum of 16 mesh per inch.

(ii) To grow the article or increase therefrom, if an article of *Ajania* spp., *Dendranthema* spp., *Leucanthemella* spp., *Nipponanthemum* spp., or *Dianthus* spp. (carnation, sweet-william), only in a greenhouse or other enclosed building, and to comply with the above conditions for a period of 6 months after importation for an article of *Ajania* spp., *Dendranthema* spp., *Leucanthemella* spp., or *Nipponanthemum* spp., and for a period of 1 year after importation for an article of *Dianthus* spp. (carnation, sweet-william).

(iii) To grow the article or increase therefrom, if an article of *Humulus* spp. (hops), a meristem culture of the imported plant will be observed for 6 months, and the original plant will be destroyed after the meristem culture is established. After the 6-month observation, the meristem culture-generated plant must remain in postentry quarantine for an additional year.

* * * * *

9. In § 319.37–8, the introductory text of paragraph (e) and paragraphs (e)(1) and (g) would be revised to read as follows.

§ 319.37–8 Growing media.

* * * * *

(e) A restricted article of any of the following groups of plants may be imported established in an approved growing medium listed in this paragraph, if the article meets the conditions of this paragraph, and is accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the article was grown that declares that the article meets the conditions of this paragraph: *Alstroemeria, Ananas, Anthurium, Begonia, Gloxinia* (= *Sinningia*), *Nidularium, Peperomia,* Polypodiophyta (= Filicales) (ferns), Rhododendron from Europe, and *Saintpaulia*.[11]

[11] *Ananas* and *Nidularium* are bromeliads, and if imported into Hawaii, bromeliads are subject to postentry quarantine in accordance with § 319.37–7.

(1) Approved growing media are baked expanded clay pellets, coal cinder, coir, cork, glass wool, organic and inorganic fibers, peat, perlite, phenol formaldehyde, plastic particles, polyethylene, polymer stabilized starch, polystyrene, polyurethane, rock wool, sphagnum moss, ureaformaldehyde, stockosorb superabsorbent polymer, vermiculite, volcanic rock, or zeolite, or any combination of these media. Growing media must not have been previously used.

* * * * *

(g) *Pest risk evaluation standards for plants established in growing media.* The Animal and Plant Health Inspection Service will conduct a pest risk assessment based on pest risk analysis guidelines established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization in response to each request to allow the importation of additional taxa of plants in growing media. These guidelines are available upon request by writing to USDA, APHIS, PPQ, Permits and Risk Assessment, Commodity Risk Analysis Branch, 4700 River Road Unit 133, Riverdale, MD 20737.

* * * * *

10. In § 319.37–9, the list of approved packing material would be amended by adding, in alphabetical order, a new entry to read as follows:

§ 319.37–9 Approved packing material.

* * * * *

Stockosorb superabsorbent polymer.

* * * * *

11. Section § 319.37–13 would be amended as follows:

a. The section heading would be revised as set forth below.

b. In paragraph (a), footnote 11 and its reference in the text would be redesignated as footnote 12.

c. A new paragraph (c) would be added to read as follows:

§ 319.37–13 Treatment and costs and charges for inspection and treatment; treatments applied outside the United States.

* * * * *

(c) Any treatment performed outside the United States must be monitored and certified by an APHIS inspector or an official from the plant protection service of the exporting country. If monitored and certified by an official of the plant protection service of the exporting country, then a phytosanitary certificate must be issued with the following declaration: ''The consignment of (fill in botanical name) has been treated in accordance with the Plant Protection and Quarantine Treatment Manual.'' During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by pests and Federal noxious weeds.

§ 319.37–14 [Amended]

15. In § 319.37–14, paragraph (b), in the list of ports of entry, under the undesignated center heading, ''TEXAS'', the asterisk immediately before the words ''El Paso'' would be removed.

Done in Washington, DC, this 18th day of December, 2001.

Richard L. Dunkle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–31602 Filed 12–27–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 35, and 37

[Docket No. RM01–8–000]

Revised Public Utility Filing Requirements

Issued December 20, 2001.

AGENCY: Federal Energy Regulatory Commission (Commission), DOE.

ACTION: Order seeking comments on proposed data sets.

SUMMARY: As contemplated in the notice of proposed rulemaking issued by the Federal Energy Regulatory Commission (Commission) earlier in this proceeding, *Revised Public Utility Filing Requirements,* (66 FR 40929), FERC Stats. & Regs. ¶ 32,554 (2001) (NOPR), this order invites comment on a proposed set of uniform data elements for public utilities' quarterly electronic filings that would accompany the final rule. Uniform data sets are necessary to ensure that the requested data is reported in a consistent, informative manner by all reporting public utilities.

DATES: Written comments must be received by the Commission by January 28, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0525

Barbara D. Bourque (Information Technology Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2338

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (202) 208–0321

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

Order Seeking Comments on Proposed Data Sets

Issued December 20, 2001.

I. Background

On July 26, 2001, the Commission issued a notice of proposed rulemaking in this proceeding, *Revised Public Utility Filing Requirements,* 66 FR 40929, FERC Stats. & Regs. ¶ 32,554 (2001) (NOPR), proposing to revise the Commission's filing requirements for public utilities. The Commission is currently engaged in reviewing the comments filed in response to the NOPR.

Among other matters, the NOPR stated that ''[l]ater in this rulemaking process, we plan to conduct further proceedings to develop the instruction manual to be used to make Index of Customer filings, which will define the data elements to be included in Index of Customers filings.'' Uniform data sets are necessary to ensure that required data are reported in a consistent, informative manner by all reporting public utilities.

As explained in the NOPR, the Commission is considering requiring public utilities to make quarterly electronic filings when we issue a final rule in this proceeding. As explained in the text of proposed § 35.10b, the filing requirements would pertain to every jurisdictional electric service, under part 35 of the Commission's regulations, 18 CFR Part 35, that was effective some time during the reporting quarter. In this order, we invite comment on a proposed set of uniform data elements for public utilities' quarterly electronic filings that would accompany the final rule.

II. Discussion

A. Suggestion To Postpone Action on Proposed Rulemaking Pending Completion of Comprehensive Review of Market Monitoring Information

As explained above, we are currently engaged in reviewing the comments filed in response to the NOPR and, with one exception, will not address those comments here. The exception is the issue raised in some comments to the NOPR that the Commission should postpone action on the proposals in the NOPR pending completion of the Commission's comprehensive review of the information needed by the Commission for market monitoring purposes.

This argument maintains that, if the Commission's comprehensive review of market monitoring information concludes that the transactional data proposed in the NOPR to be reported in Index of Customers filings are later found to be unnecessary, then issuance of a final rule requiring the electronic filing of that information (and posting of that information on a website) would result in public utilities incurring unnecessary expenses to establish procedures to collect and report these data. The same commenters also argue that it would be wasteful to force public utilities to design and implement procedures to report transactional data for market monitoring purposes, merely to have those reporting requirements withdrawn, once the Commission completes its review of needed market monitoring information.

We find these arguments without merit because, although the Commission has not completed its comprehensive review of market monitoring data, we believe that the information proposed to be reported would be the minimum needed for market monitoring purposes, even if we later determine that additional data also will be necessary. Moreover, as we noted in the NOPR, we

believe that the proposed reporting requirements would improve the quality of information reported to the Commission by prescribing that public utilities report information in a consistent, accessible format.

B. Proposed Data Sets

Attached to this order are tables specifying proposed data elements that identify (with greater detail than provided in the NOPR) the information to be reported in Index of Customers filings. The Index of Customers is intended to electronically collect data on all jurisdictional contracts, including, among other matters, data concerning service agreements, bilateral contracts, rate schedules, and interconnection agreements. As such, many different types of jurisdictional services must be accommodated by the data elements. Depending on the service(s) offered by a particular public utility, it may have to submit data for only a certain subset of the data elements identified in the Appendices. The data elements are organized to show what data are required for various types of services.

To aid in identifying the data elements, we have included definitions (in many cases, with examples). We have also identified whether the data elements are to be filed as file identification information, contract data, and/or transactional data. For the sake of clarity, certain data elements that will be system-generated have been omitted from these tables. Some data elements will appear in more than one section; others will be unique to a section. For instance, the ''company_name'' data element will be used to identify the respondent, filing agent, buyer, or seller, depending on where it is entered into the system.

We received several comments concerned with the appropriate time increment for reporting pricing data for transactions (*i.e.,* whether the pricing data should be reported in hourly or even shorter increments). We are proposing that, if a price changes during a day, then respondents should submit high, low, and (weighted) average prices on a daily basis for those transactions that are shorter than a day. If prices remain unchanged for two days or more, they may be reported as a single datum entry. We invite comments from a computer systems perspective about whether filing pricing data this way would be less burdensome than submitting pricing data for each period of time a unique price is charged (*i.e.,* if a power sale involved five price changes in an hour, it would be filed as five transactions for that hour).

It is our desire to collect Index of Customer information in the least burdensome way. We have tried to follow OASIS standards wherever possible to minimize the introduction of new data elements or formats. If commenters see a way for the proposed data sets to match up better with the OASIS Standards and Communication Protocols Document, version 1.4 (OASIS S&CP Document), they should address this in their comments.

In the attached tables, there are a number of field definitions that include the term {registered} in the list of valid entries. This means that we will allow other terms to be entered into the field, but only after they have been approved by the Commission and entered into the validation tables for that field. The reason for this is to ensure data integrity. If we allowed free form text in these fields, it would hinder our ability to perform meaningful searches of the data because companies do not always use the same name for the same item, or there may be misspellings. We invite respondents to submit other proposed entries for these fields either as part of this NOPR process or at any time in the future.

The first table (Appendix A) is an overview of the types of data we propose to collect, identifying the sections of the data collection: filer identification, contract data, and transaction data. The first three columns indicate which data elements pertain to each section. File Identification Information, designated by an F in the first column, provides information about the identity of the filer and the party on whose behalf the filing is being made (if different). The data must be filed by every public utility filing an Index of Customers report. Contract Data, identified by a C in the second column, include the contract data elements that every public utility filing an Index of Customers must provide to describe its contracts.

Every jurisdictional service that was effective some time during reporting quarter must be included on the Index of Customers. This includes services for which service agreements have already been filed with and approved by the Commission, services for which service agreements conform with filed and approved standard forms of service agreements, rate schedules, and unique services such as individually negotiated bilateral agreements. Transactional Data, shown by a T in the third column of Appendices A and B, identifies the transactional data elements that every public utility filing an Index of Customers must provide to describe its power sales. To the extent that a public utility makes no power sales during the applicable quarter, it is not required to report any transactional data in its Index of Customers filing for that quarter. The NOPR proposed to require transactional data for every electric commodity sale, whether the rate was cost-based, market-based, under a rate schedule, or under a tariff. In addition, if any other services are approved for market-based rates in the future, they will have to be reported in this section.

The second table (Appendix B) is a detailed look at the data elements including their format. Where applicable, we have identified the analogous OASIS data element. We have also included the intended field length and a list of valid entries. This table is intended for computer and technical personnel to review. Respondents are encouraged to comment on these items which will aid the successful development of the system.

The third table, shown in Appendix C, shows which elements will be required for short term transmission contracts and which will be required for long term transmission contracts.

The NOPR proposes that public utilities report in the Index of Customers all of their sales transactions, ''including book outs and net outs.''[1] A number of parties' comments expressed concern about how the Commission would define the ''book outs'' and ''net outs'' that must be reported in the Index of Customers, contending that including ''book outs'' and ''net outs'' would be burdensome and that ''book outs'' are nonphysical transactions that should not be reported.

In industry parlance, a ''book out'' is the offsetting of opposing buy-sell transactions (*e.g.,* a sale of 100 MW from A to B and a sale of 90 MW from B to A would result in these transactions being booked-out and treated as a 10 MW sale from A to B). A ''net out'' is similar, but instead concerns the offsetting of dollars rather than MW (*e.g.,* if A owes B $2,700 and B owes A $3,000, the transactions are netted out and treated as a single transaction of $300).

As noted by many parties, the Commission found in *Morgan Stanley Capital Group, Inc.,* 69 FERC ¶ 61,175 at 61,696 (1994), as modified in 72 FERC ¶ 61,082 at 61,435–36 (1995) (*Morgan Stanley*) that we would not extend our power marketer reporting requirements to purely financial transactions[2] and in

[1] *See* FERC Stats. & Regs. ¶ 32,554 at 34,071–72.

[2] We note, however, that in Docket No. RM02–3–000 we are proposing to revise the Uniform System of Accounts (USofA) to require reporting on

Continued

New York Mercantile Exchange, 74 FERC ¶ 61,311 at 61,987 (1996) (*NYMEX*), we found that we lack jurisdiction under sections 203 and 204 of the FPA over the trading of electricity futures contracts approved for trading by the Commodity Futures Trading Commission (CFTC). We held, however, that we do have jurisdiction under §§ 205 and 206 of the FPA over transactions that go to physical delivery. Intervenors contend, based on our precedent in *Morgan Stanley* and *NYMEX,* that we should not require the reporting of ''book outs'' and ''net outs'' in the Index of Customers.

Subsequent to issuance of *Morgan Stanley,* respondents' quarterly transaction reports have reported their ''book outs'' and ''net outs'' of physical transactions on an aggregated basis. Reporting these book outs and net outs of physical transactions is appropriate because the underlying transactions are not purely financial transactions. Our proposal in the NOPR does not rewrite the line we drew in *Morgan Stanley* or in *NYMEX.* The same transactions for which book outs and net outs are currently reported in quarterly transaction reports are to be reported in the Index of Customers. The comments filed in response to the NOPR have not persuaded us to reconsider this issue.

However, to avoid confusion, we will give specific guidance as to which book outs or net outs must be reported under the proposals in the NOPR, as clarified in this order. In *Morgan Stanley* and *NYMEX,* the Commission stated that it has jurisdiction over those transactions that go to physical delivery, and does not have jurisdiction over purely financial transactions. However, commenters suggest that booked-out transactions do not go to physical delivery and, therefore should not have to be reported. We note that, in *Morgan Stanley* and *NYMEX,* the Commission was distinguishing between transactions that were purely financial, *i.e.,* transactions usually performed in the futures market, and physical transactions, *i.e.,* scheduled sale or purchase transactions to meet load. Commenters are not drawing the line between futures transactions and physical transactions, but between physical transactions that are delivered in full and those that are offset either all or in part (*e.g.,* they argue that two offsetting 100 MW sales result in no deliveries; thus nothing need be reported on either transaction despite the fact that the sales were not financial positions but in fact physical power sales that were offset similar to a net interchange between two control areas). Just because a MW for a sale was not used to meet a distant load but instead met a more local load due to scheduling and physics does not change the fact that each individual transaction of such a series of offset transactions is a physical transaction. Accordingly, we clarify that we are proposing that sales of power that are offset through a book out or net out based on the physical characteristics (*i.e.,* location of source and sink) of the transactions must be reported as separate transactions.

Morgan Stanley did not address the issue of whether book outs and net outs are to be reported on an aggregated or disaggregated basis. In the absence of specific guidance on this issue, respondents have elected to file this information on an aggregated basis. To provide the public and Commission with more useful information, we clarify that, under the proposal in the NOPR, public utilities would be required to report book outs and net outs of physical transactions on a disaggregated basis showing each individual leg of the transaction that generated the book out or net out.

D. Additional Discussion on Data Elements

The majority of the data elements are self-explanatory: contact_name, contact_address, contact_email and the like. However, several data elements require additional discussion.

1. Company Identification Data Elements

Appendix A identifies the data elements ''company_name,'' ''company_duns'' and a series of related data elements necessary to identify a contact person, address and means of contact. These data elements will be used to collect data on the multiple parties related to the filing of the report and the information contain in the report. The data collection anticipates the need to collect information on up to three types of parties: (a) Filing Agent—the company or organization making the filing with the Commission (this could be the public utility itself, or an organization such as a law firm making the filing on the utility's behalf; (b) Seller—the public utility providing services; and (c) Purchaser—the buyer of the public utility's service(s). Not all data elements will be required for all parties. For example, there is no need for a company DUNS [3] number for the filing agent. For the purchaser, the Commission intends to require only company name and the associated DUNS number. No contact data will be required. A separate Index of Customers filing will be required for each public utility. Each filing is required to include the name (contact_name) and location information for at least one contact person. Contacts can be listed for the filing agent and/or the seller.

2. ''Contract_service_agreement_id''

The Commission is not proposing any particular method for a utility to create unique contract service agreement identifiers. However, whatever method a utility adopts should be readily relatable to any service or revenue a utility must report (such as in a Form No. 1 filing, rate proceeding, or Commission audit).

3. ''Contract commencement _dt'' and ''begin_ date''

The contract commencement date is the initial date service commenced under the contract. This date, once established, does not change in subsequent quarterly Index of Customers filings.

Electric utility contracts may provide for several unbundled services under a single contract. The purpose of the ''begin_date'' data element is to identify the initial date an individual service commenced. This date can differ from the date service commenced under a contract, or from other services under a contract. This date, once established, does not change in subsequent quarterly Index of Customers filings.

The distinction between ''contract_commencement_date'' and ''begin_date'' can best be illustrated with an example. Power sales or transmission might be provided under a contract before various ancillary services (also provided for under the contract) are commenced. Under this scenario, the date service under the contract commences would be reported under the ''contract_commencement_date'' data element and the date when each ancillary service commenced would be reported with its own ''begin_date.''

4. ''Contract termination_dt,'' ''cancellation of_contract,'' ''actual_termination_ dt,'' and ''end_date''

The ''contract_termination_dt'' data element is intended to capture the expected initial contract's termination

derivatives, and we are seeking comment on the extent to which marketers should be required to follow the USofA and what information, if any, should be reported by these entities.

[3] DUNS numbers refer to the Data Universal Numbering System, maintained by Dun and Bradstreet.

date. If the contract terminates during the reporting period, then the flag ''cancellation_of_contract'' should be provided, as well as the actual termination date (*i.e.,* ''actual_termination_dt'').

Electric utility contracts may provide for several unbundled services under a single contract. The purpose of the ''end_date'' data element is to identify the date an individual service terminates. This date, once established, does not change in subsequent quarterly Index of Customers filings.

5. ''Rate,'' ''rate_min,'' ''rate_max,'' and ''rate_desc.''

The first three of these data elements will be used to collect both contract and transaction information. However, the definitions for the required data are different, depending on whether the rate information is applicable to contract data or transactional data.

a. Contractual Rate Data

Appendix A proposes four rate related data elements: ''rate,'' ''rate_min,'' ''rate_max'' and ''rate_desc.'' [4] The ''rate'' element is a numeric input that should reflect the stated rate during the reporting period. The ''rate_min'' and ''rate_max'' data elements should report the lowest and highest rate for any unit of service received during the reporting period as provided in the contract. For contracts with stated rates, the rate information in all three data elements would be the same. The ''rate_desc'' data element can be completed as simply as stating ''maximum approved rate.'' However, if a cost-based rate is discounted or negotiated below the FERC-approved maximum rate, then the utility must describe the method by which the rate is calculated. This may be as simple, for example, as ''Stated rate,'' or, if based on some index, an example would be ''Fixed cost of $x.xxxx plus 80% of Index Price Y.'' The rate data element, in this instance, may be left blank. Market-based power sales contracts need not provide any rate information for the contract record. That information will be collected in the transaction record.

b. Transaction Rate Data

Appendix A proposes three rate-related data elements: ''rate,'' ''rate_min,'' and ''rate_max.'' The rates required for these data elements should be solely for the respondent's services or sales under a FERC tariff. As noted above, we are proposing that in lieu of submitting minute-by-minute data, respondents should submit high, low, and weighted average prices on a daily basis for those transactions which are shorter than a day.

Public utilities filing transaction data on power sales will be required to include transaction data for all products and services (whether market-based or cost-based) related under the terms of the contract to the power sale.

The transaction data element ''total_transaction_charge'' is the total revenue for the transaction period received from the customer for the service or sale under the terms of the contract. This would include revenues received for all services related to a product that is the subject of the transaction report. The ''total_transaction_charge'' is also to include all other applicable revenue for other services provided under the contract, such as ancillary services or bundled transmission provided by the respondent or others under the contract.

6. ''Product_name,'' ''product_type_ name,'' ''product_sub type_name,'' ''increment_name,'' ''increment_peaking_ name'' and ''term_name''

The purpose of these data elements is to identify the service provided (product_name), along with some general characteristics of the service to improve analysis of the data. For example, ''product_ name'' could be ''schedule system control and dispatch;'' ''product_type'' could be ''transmission;'' and ''product_sub_ type'' could be ''ancillary service.''

We are proposing to require the data element ''term_name'' because the Commission often establishes different reporting and other requirements for short-term, as opposed to long-term, contracts. For example, as shown in Appendix C, the standard form of service agreement provided by Order No. 888–B [5] requires significantly less information for short-term transportation as compared to long-term transportation. The Commission does not propose in this NOPR to change the standard form of service agreements.

7. ''{Registered}''

Various proposed data elements require the use of codes to identify certain services and other information. The Commission proposes, to the extent possible, to use the codes and definitions already accepted and in use on the OASIS system. For example, for the data element ''product_name,'' the Commission proposes to use SC—Scheduled system control and dispatch, and RV—Reactive supply and vol. control from the OASIS S&CP Document data set.[6] The Index of Customers, however, will require the reporting of more than just the OATT services. Therefore, the OASIS registered codes do not reflect the variety of services offered by utilities under Part 35 of the Commission's regulations.

We invite comments as to whether the same voluntary industry working group(s) that seek industry consensus and periodically recommend revisions to the OASIS S&CP Document would be available to aid the Commission in developing and maintaining the various codes for Index of Customer Data Sets, or whether another approach would be preferable.

8. ''Ferc designation''

The ''ferc_designation'' data element is designed to identify the FERC-approved designation for the tariff or rate schedule that identifies the terms and conditions of service and the applicable rates. These data are the same as required by § 35.9(a) and 35.9(b)(1) of the Commission's regulations. We have revised the OASIS data element for ''tariff_designation'' because the data element also applies to sales provided under a rate schedule.

9. Identifying Nonconforming Contracts

We invite comment on whether respondents should identify nonconforming contracts as part of their Index of Customers submittals.

E. Electronic Format

The Commission is developing software to capture, manage, and disseminate its data. We invite interested parties who wish to participate in a pilot test of this data collection to contact Barbara Bourque at barbara.bourque@ferc.gov.

III. Public Comment Procedure

This order specifies the data sets that we are considering adopting as part of a final rule in this proceeding. Prior to taking final action on this proposal, we are inviting comments from interested

[4] When a split savings price is paid, this would be reported in the ''rate_desc.'' data element.

[5] *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), *order on reh'g,* Order No. 888–A, 62 FR 12274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997) (Order No. 888–A), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in part sub nom.,* Transmission Access Policy Study Group, *et al.* v. FERC, 225 F. 3d 667 (D.C. Cir. 2000), *cert. granted in part and denied in part,* 121 S. Ct. 1185 (2001).

[6] OASIS S&CP Document, Appendix A–2, AS_TYPE.

persons on the proposals discussed in this order and fully set out in the attachments. The Commission invites interested persons to submit comments, data, views and other information concerning matters set out in this order.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position on the issues raised in this order, including any revisions they would suggest to the proposed data sets (along with the reasons supporting their suggested revisions), along with any related matters or alternative proposals that commenters may wish to discuss. Commenters are requested to identify each specific question posed by this order that their discussion addresses and to use appropriate headings. Commenters should make comments as specific as possible, and when comments address specific data elements or issues, use the same terms as are used in this order. Commenters should separately identify any additional issues they wish to raise. Commenters should double space their comments.

Comments may be filed on paper or electronically via the Internet and must be received by the Commission within 30 days after publication of this order in the **Federal Register**. All comments, whether submitted electronically or in a paper filing, should be preceded by a caption identifying the name (Public Utility Filing Requirements) and docket number (Docket No. RM01–8–000) of this proceeding and should reference that they are being filed in response to this order. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

For the convenience of Commission Staff, we request that paper filings be accompanied by a computer diskette copy in a Commission-prescribed format (*see* discussion immediately below). We request that the accompanying computer diskette should have a label providing the following information: Docket No. RM01–8–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person. Any discrepancies between the paper filing and the accompanying diskette will be resolved by reference to the paper filing.

Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on ''e-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments.

User assistance for electronic filing is available at 202–208–0258 or by E-Mail to *efiling@ferc.fed.us.* Comments should not be submitted to the E-Mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by E-mail to *RimsMaster@ferc.fed.us.*

IV. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

The Commission Orders

Interested persons may file comments on the proposed data sets as discussed in this order and shown in Attachment A to this order within thirty (30) days of the date of publication of this order in the **Federal Register**, as discussed in the body of this order.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

BILLING CODE 6560–50–P

ATTACHMENT A

FEDERAL ENERGY REGULATORY COMMISSION

INDEX OF CUSTOMERS' DATA SETS

Version 1.0

(Date issued)

Appendix A

RM01-8-000

The Standard Electric Contract and Transaction Report

Section			Field Name	Definition
F	C	T	company_name	Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report). This field will include filing agent, seller and purchaser.
F	C	T	company_duns	DUNS Number for Company Unique Identification. A lookup table will be necessary to validate this number.
F			company_web_site_address	Respondent's Web Site Address "URL" where the Standard Electric Contract and Transaction Report (SECToR) is located.
F			contact_name	Name of contact for the filing
F			contact_title	Title of contact
F			contact_address	Street address for contact
F			contact_city	Contact city
F			state_fk	Two character state or province abbreviation
F			contact_zip	Contact zip code
F			country_name	Country (USA, Canada, or Mexico) for contact address
F			contact_phone	Phone number of contact
F			contact_email	E-mail address of contact
F			filing_quarter	This is the period the filing is being submitted for. Valid entries are QXYY where X is the number of the quarter filed for and YY is the last two digits of the year.
	C		contract_affiliate	This is a flag to determine if the customer is an affiliate. Set to Yes if the customer is an affiliate of the provider.
	C		ferc_contract_designation	Valid Entries: FERC's designation, e.g., "FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;" or "FERC Electric Rate Schedule No. 126."
	C		contract_service_agreement_id	Unique identifier for the contract. For example, the ID may contain a string built by concatenating duns, tariff or rate schedule number and company's contract number under tariff.
	C		contract_execution_dt	Date contract was signed by contracting parties
	C		contract_commencement_dt	Date service under the contract commences
	C		contract_termination_dt	Date contract is terminated (specified contract termination date).
	C		cancellation_of_contract	If the contract is terminated in the reporting quarter, flag it as Terminated. T=terminated.
	C		actual_termination_dt	If parties terminate the contract at a date different from that specified in the contract, "contract_termination_dt", then the date must be specified here. The filer must also indicate under "CANCELLATION_OF_CONTRACT" if the contract is terminated during the reporting quarter.
	C	T	class_name	Transmission service class provided as defined in OASIS. Name of class. Valid entries are "Firm", "Non-Firm", "TTC", "Secondary", "N/A", or {registered}.

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The Standard Electric Contract and Transaction Report

Section			Field Name	Definition
	C	T	quantity	Product quantity for the contract item identified. (Quantity – like number of Megawatts per hour (energy sales) or Number of Megawatts (transmission))
	C	T	rate	Rate charged for this item per unit. Used with contract data when a single rate is designated for a product. Used with transaction data to designate the transaction period's weighted average actual rate.
	C	T	rate_min	Minimum rate to be charged per the contract, if a range is specified. For the transaction report for commodity sales, the minimum rate charged per unit for the transaction period.
	C	T	rate_max	Maximum rate to be charged per the contract, if a range is specified. For the transaction report for commodity sales, the maximum rate charged per unit for the transaction period.
	C		rate_desc	Description of rate. May reference FERC tariff, or, if a discounted or negotiated rate, include algorithm.
	C	T	units	The unit of measurement for the quantity and rates represented. Examples include $/KW, $/MW and $/MWH.
	C	T	point_of_receipt_control_area	Point of receipt control area. Examples include "AEP", "JACK", "FE"." (SAME list of codes – see Point of Delivery above)
	C	T	point_of_deliver_control_area	Point of delivery control area. Examples include "AEP", "JACK", and "FE". (These values will match what is provided for in the OASIS).
	C	T	point_of_receipt_specific_loc	The specific location for the point of receipt (POR) as spelled out in the contract. Do not enter the control area, but rather the POR indicated. Examples include "sub-station" and "generation plant."
	C	T	point_of_delivery_specific_loc	The specific location for the point of delivery (POD) as spelled out in the contract. Do not enter the control area, but rather the POD indicated. Examples include "sub-station" and "generation plant."
	C		begin_date	Beginning date of for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.
	C		end_date	Ending date for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.
	C		extension_provision_desc	Description of extension provision. This field would contain Text – for example "Automatically renewed until canceled."

Appendix A

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The Standard Electric Contract and Transaction Report

Section			Field Name	Definition
	C	T	increment_name	Name of increment. The Increment variable refers to both contract and transaction data. For transmission information, the service selected would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or Annually) or {Registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.) For power sales, this variable refers to type of sale engaged or transacted for.
	C	T	increment_peaking_name	Name for increment peaking. For products, services or transaction that are identified as "P" = on Peak, "OP" = Off-Peak, "FP" = Full Period, "NA" = Not Applicable for this product, service or transaction; or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
	C	T	product_name	A product is something being bought and sold, a type of service or standard agreement. Examples: Point-To-Point Network Capacity Installed Capacity SC - Scheduled system control and dispatch RV - Reactive supply and vol. control RF - Regulation and freq. response EI - Energy imbalance SP - Spinning reserve SU - Supplemental reserve DT - Dynamic Transfer TL - Real Power Transmission Loss BS - System Black Start Capability Must Run Unit Cost Based Power Sale Economy Power Sale Emergency Power Sale General Purpose Power Sale Unit Power Sales Border Sales Specialized affiliate transactions Interconnection Agreements System Impact and/or Facilities Study Charge(s) Direct Assignment Facilities Charge {registered} (New products may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)

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The Standard Electric Contract and Transaction Report

Section			Field Name	Definition
	C	T	product_sub_type_name	Name of product sub type, such as: A = Ancillary Service (cost-based), C = Capacity, CB = Cost-Based Power, I = Installed Capacity, M = Market-Based Power, N = Network Transmission, P = Point-To-Point Transmission, or {registered}.
	C	T	product_type_name	The "Product type name" includes: T =Electric Transmission , E = Energy, C = Capacity, S = Services, or {registered}
	C	T	term_name	Name for term. LT = Long-Term (>= one year), ST= Short-Term (< one year).
		T	transaction_end_dt	Transaction end date and time must be after the beginning of the reporting quarter. Date must contain hours, minutes, seconds (MM.DD.YYYY.HH.MM.SS.TZ) where minutes and seconds are not provided, default to zeros. It is critical that all Users have a clear and unambiguous representation of time associated with all information. For this reason, all Data Elements associated with time shall represent "wall clock" times, which are NOT to be confused with other common industry conventions such as "hour ending."
		T	total_transaction_charge	Total revenue for transaction, including for the commodity and all other services related to the commodity sale under the terms of the contract, including bundled ancillary and transmission services provided by the respondent or others. This is in dollars and cents.
		T	transaction_begin_dt	Transaction begin date must be prior to the end of the reporting quarter. Date must contain hours, minutes, seconds (MM.DD.YYYY.HH.MM.SS.TZ) where minutes and seconds are not provided, default to zeros.
		T	transaction_quantity	The quantity of the product in this transaction. This could be a whole number or it could include decimals.

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The Standard Electric Contract and Transaction Report

Notes:
Section: (F = Filer Identification, C = Contract Data, and T = Transaction Data)
{registered}: This designation makes note that the Commission expects additional variables to be included in the category. Additional entries which the filing parties wish to include must be registered.
Time Frame: It is critical that all Users have a clear and unambiguous representation of time associated with all information. For this reason, all Data Elements associated with time shall represent "wall clock" times, which are NOT to be confused with other common industry conventions such as "hour ending."
Time Zone: The IoC utilizes the OASIS definition for time zone. Valid entres include: AD, AS = Atlantic Time; ED, ES = Eastern Time; CD, CS = Central Time; MD, MS = Mountain Time; PD, PS = Pacific Time; and UT = Universal Time.

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The Standard Electric Contract and Transaction Report

Section			Field Name	Corresponding "OASIS" Name or "X" if Not	Field Format: min. characters {type of ASCII}.max. characters	Restricted Values
F	C	T	company_name	PRIMARY_PROVIDER_CODE*, SELLER_NAME*, CUSTOMER_NAME*	1{ALPHANUMERIC}80	Text field generated by DUNS number, where applicable
F	C	T	company_duns	PRIMARY_PROVIDER_DUNS*, CUSTOMER_DUNS SELLER_DUNS	9{NUMERIC}9	Valid DUNS number
F			company_web_site_address	X	1{ALPHANUMERIC}80	Valid Entries: e.g.. "http://web address…"
F			contact_name	X	1{ALPHANUMERIC}25	Free form text
F			contact_title	X	1{ALPHANUMERIC}25	Free form text
F			contact_address	X	Multiple Lines (4) 1{ALPHANUMERIC}25	Address Format
F			contact_city	X	1{ALPHANUMERIC}30	Free form text
F			state_fk	X	2{ALPHANUMERIC}10	Drop down list
F			contact_zip	X	5{ALPHANUMERIC}10	Zip code as either 12345, or 12345-1234
F			country_name	X	2{ALPHA}6	Valid Entries: US, USA, Canada, or Mexico
F			contact_phone	X	14{ALPHANUMERIC}20	Area code and telephone number, plus any extensions: (aaa)-nnn-nnnn xnnnn
F			contact_email	X	1{ALPHANUMERIC}25	Valid Internet E-Mail address
F			filing_quarter	X	4{ALPHANUMERIC}6	Valid entry: Q#YY or Q#YYYY
	C		contract_affiliate	AFFILIATE_FLAG	1{ALPHANUMERIC}4	Valid Values: YES, NO
	C		ferc_contract_designation	X	1{ALPHANUMERIC}50	Valid Entries: FERC's designation, eg. "FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;" or "FERC Electric Rate Schedule No. 126."
	C		contract_service_agreement_id	X	1{ALPHANUMERIC}30	Free form text

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Section			Field Name	Corresponding "OASIS" Name or "X" if Not	Field Format: min. characters {type of ASCII} max. characters	Restricted Values
	C		contract_execution_dt	X	8{ALPHANUMERIC}8	Valid date and time: yyyy+mo+dd
	C		contract_commencement_dt	X	10{ALPHANUMERIC}10	Valid date and time: yyyy+mo+dd+tz
	C		contract_termination_dt	X	10{ALPHANUMERIC}10	Valid date and time: yyyy+mo+dd+tz
	C		cancellation_of_contract	X	1{ALPHANUMERIC}3	Valid Values: YES, NO, {blank} or N/A
	C		actual_termination_dt	X	10{ALPHANUMERIC}10	Valid date and time: yyyy+mo+dd+tz
	C	T	class_name	TS_CLASS *	1{ALPHANUMERIC}80	Valid classes: "Firm", "Non-Firm", "Secondary", or "N/A"
	C	T	quantity	CAPACITY_GRANTED *, CAPACITY_SCHEDULED*, CAPACITY_RESERVED*, CAPACITY_USED*	1{NUMERIC}5 + "." + 2{NUMERIC}4	A positive number with 2 to 4 decimals
	C	T	rate	X	1{NUMERIC}5 + "." + 2{NUMERIC}4	A positive number with 2 to 4 decimals
	C	T	rate_min	X	1{NUMERIC}5 + "." + 2{NUMERIC}4	A positive number with 2 to 4 decimals
	C	T	rate_max	(C) CEILING_PRICE *	1{NUMERIC}5 + "." + 2{NUMERIC}4	A positive number with 2 to 4 decimals
	C		rate_desc	X	1{ALPHANUMERIC}500	Free form text
	C	T	units	ATTRIBUTE_UNITS *	1{ALPHANUMERIC}20	Valid entries include KW, KWH, MW and MWH.
	C	T	point_of_receipt_control_area	CONTROL_AREA *	1{ALPHANUMERIC}20 Only non-numeric and non-alpha character allowed is ".".	Valid name of a control area

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The Standard Electric Contract and Transaction Report

Section			Field Name	Corresponding "OASIS" Name or "X" if Not	Field Format: min. characters {type of ASCII} max. characters	Restricted Values
	C	T	point_of_deliver_control_area	CONTROL_AREA *	1{ALPHANUMERIC}20, Only non-numeric and non-alpha character allowed is ".".	Valid name of a control area
	C	T	point_of_receipt_specific_loc	POINT_OF_RECEIPT *	1{ALPHANUMERIC}20 * Only non-numeric and non-alpha character allowed is ".".	Unique value within Primary Provider. Only special character allowed is ".", for example, ab.cde.123
	C	T	point_of_delivery_specific_loc	POINT_OF_DELIVERY *	1{ALPHANUMERIC}20 * Only non-numeric and non-alpha character allowed is ".".	Unique value within Primary Provider. Only special character allowed is ".", for example, ab.cde.123
	C		begin_date	X	16{ALPHANUMERIC}16	Valid date and time to seconds, yyyy+mo+dd+hh+mm+ss+tz
	C		end_date	X	16{ALPHANUMERIC}16	Valid date and time to seconds, yyyy+mo+dd+hh+mm+ss+tz
	C		extension_provision_desc	X	1{ALPHANUMERIC}80	Free form text.
	C	T	increment_name	SERVICE_INCREMENT *	1{ALPHANUMERIC}8	Valid increments Hourly, Daily, Weekly, Monthly, Yearly, {Registered}
	C	T	increment_peaking_name	TS_PERIOD *	1{ALPHANUMERIC}15	Descriptions are: "P" = on Peak, "OP = Off-Peak, "FP" = Full Period, "NA" = Not Applicable for this product, service or transaction; or {registered} (new items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)

RM01-8-000, IoC **Appendix B**

The Standard Electric Contract and Transaction Report

Section			Field Name	Corresponding "OASIS" Name or "X" if Not	Field Format: min. characters {type of ASCII} max. characters	Restricted Values
	C	T	product_name	X Note. This field covers a number of element names, some are separately identified in the OASIS site, such as: TS_TYPE or AS_TYPE. *	1{ALPHANUMERIC}45	There will be a drop down list of products listed. Examples include: Point-To-Point Network Capacity Installed Capacity SC - Sched. Sys. control & dispatch RV - Reactive supply and vol. control RF - Regulation and freq. response EI - Energy imbalance SP - Spinning reserve SU - Supplemental reserve DT - Dynamic Transfer TL - Real Power Transmission Loss BS - System Black Start Capability Must Run Unit Cost Based Power Sale Economy Power Sale Emergency Power Sale General Purpose Power Sale Unit Power Sales Border Sales Specialized affiliate transactions Interconnection Agreements System Impact and/or Facilities Study Charge(s) Direct Assignment Facilities Charge {Registered}

Section			Field Name	Corresponding "OASIS" Name or "X" if Not	Field Format: min. characters {type of ASCII} max. characters	Restricted Values
	C	T	product_sub_type_name	X	1{ALPHA}25	A = Ancillary Service, C = Capacity, CB = Cost-Based Power, I = Installed Capacity, M = Market-Based Power, N = Network Transmission, P = Point-To-Point Transmission, or {registered} (a reserved field for expansion).
	C	T	product_type_name	X	1{ALPHA}25	Valid entries are: T =Electric Transmission , E = Energy, C = Capacity, S = Services, or {registered} (a reserved field for expansion).
	C	T	term_name	X	2{ALPHANUMERIC}20	Valid entries are: LT = Long-Term (>= one year), ST= Short-Term (< one year).
		T	transaction_end_dt	X	16{ALPHANUMERIC}16	Valid date and time to seconds, yyyy+mo+dd+hh+mm+ss+tz
		T	total_transaction_charge	X	1{NUMERIC}8 + "." + 0{NUMERIC}2	A positive number with up to 2 decimals
		T	transaction_begin_dt	X	16{ALPHANUMERIC}16	Valid date and time to seconds, yyyy+mo+dd+hh+mm+ss+tz
		T	transaction_quantity	X	1{NUMERIC}5 + "." + 2{NUMERIC}4	A positive number with 2 to 6 decimals

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Notes:
Section: (F = Filer Identification, C = Contract Data, and T = Transaction Data)
* The **asterisk** "*" denotes that the OASIS definition is not a direct match but is comparable for certain contracts or transactions. The Commissions use of this term for the IoC is broader than the term definition used in the OASIS. To the extent that a field is used in both the Contract and Transactions environment, the OASIS definition will be different.
{registered}: This designation makes note that the Commission expects additional variables to be included in the category. Additional entries which the filing parties wish to include must be registered.
Time Frame: It is critical that all Users have a clear and unambiguous representation of time associated with all information. For this reason, all Data Elements associated with time shall represent "wall clock" times, which are NOT to be confused with other common industry conventions such as "hour ending."
Time Zone: The IoC utilizes the OASIS definition for time zone. Valid entres include: AD, AS = Atlantic Time; ED, ES = Eastern Time; CD, CS = Central Time; MD, MS = Mountain Time; PD, PS = Pacific Time; and UT = Universal Time.

Appendix C

RM01-8-000

Distinguishing between Short-Term and Long-Term Transmission Contracts

Data Element:	Firm or Non-Firm Point-To-Point Transmission	
	S-T	L-T
General Information Required:		
Service Agreement Date	X	X
Transmission Provider	X	X
Transmission Customer	X	X
Application Deposit	X	X
Commencement of Service	X	X
Termination of Service	X	X
Service Agreement Execution Date	X	X
Specification's Required:		
Term of Transaction	N/A	X
Start Date of Transaction (Corresponds to Commencement of Service)	N/A	X
Termination Date of Transaction	N/A	X
Description of Capacity and Energy to be transmitted by Transmission Provider including the electric control area in which the transaction originates	N/A	X
Point of Receipt	N/A	X
Delivering Party	N/A	X
Point of Delivery	N/A	X
Receiving Party	N/A	X
Maximum amount of Capacity and Energy to be transmitted (Reserved Capacity).	N/A	X
Designation of party(ies) subject to reciprocal service obligation	N/A	X
Name of any Intervening Systems providing transmission service	N/A	X
Transmission Charge	N/A	X
System Impact and/or Facilities Study Charge(s)	N/A	X
Direct Assignment Facilities Charge	N/A	X
Ancillary Services Charges	N/A	X

Note: Identification From Order 888, Attachment A. General information required from pages 1 & 2 of the standard form; and Specifications required are from 3 & 4 of the standard form.

[FR Doc. 01–32005 Filed 12–27–01; 8:45 am]
BILLING CODE 6560–50–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 01N–0284]

Import Tolerances; Extension of Comment Period; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an extension of comment period for an advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of December 7, 2001 (66 FR 63519). The document gave notice that FDA is extending the comment period for the ANPRM that appeared in the **Federal Register** of August 10, 2001 (66 FR 42167), concerning regulation for establishing import drug residue tolerances for imported food products of animal origin for drugs that are used in other countries, but that are unapproved new animal drugs in the United States. The document was published with an inadvertent error. This document corrects that error.

DATES: The extension of the comment period to March 11, 2002, and this correction were effective on December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Doris B. Tucker, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–30331, appearing on page 63519 in the **Federal Register** of December 7, 2001, the following correction is made:

1. On page 63519, in the second column under the heading **ADDRESSES**, the mail code for the Dockets Management Branch is corrected to read ''HFA–305.''

Dated: December 19, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–31877 Filed 12–27–01; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AZ,CA,HI,NV–066–MSWb; FRL–7123–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Negative Declarations; Municipal Waste Combustion; Arizona; California; Hawaii; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the small Municipal Waste Combustion (MWC) units section 111(d) plan negative declarations submitted by the States of Arizona, California, Hawaii, and Nevada. These negative declarations certify that small MWC units subject to the requirements of sections 111(d) and 129 of the Clean Air Act do not exist in these States.

In the Rules section of this **Federal Register**, EPA is approving each State's negative declaration as a direct final rule without prior proposal because the Agency views this as noncontroversial and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rulemaking based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 28, 2002.

ADDRESSES: Written comments should be addressed to Andrew Steckel, U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the documents relevant to this proposed rule are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mae Wang, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street (AIR–4), San Francisco, CA 94105–3901, Telephone: (415) 947–4124.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 et seq.

Dated: December 6, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 01–31944 Filed 12–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRN–7122–4]

RIN 2090–AA30

Project XL Site-Specific Rulemaking for Implementing Waste Treatment Systems at Two Virginia Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a site-specific rule to implement a project under the Project XL program, an EPA initiative which encourages regulated entities to achieve better environmental results at decreased costs at their facilities. Today's proposal would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, at two Virginia landfills: The Maplewood Recycling and Waste Disposal Facility, located in Amelia County, Virginia (Maplewood Landfill); and the King George County Landfill and Recycling Facility, located in King George County, Virginia (King George Landfill). The Maplewood Landfill is owned and operated by USA Waste of Virginia, Inc., and the King George Landfill is owned by King George County and operated by King George Landfills, Inc. USA Waste of Virginia, Inc. and King George Landfills, Inc. are both subsidiaries of Waste Management, Inc., and will be referred to collectively as ''Waste Management.'' Maplewood Landfill and King George Landfill, both of which are municipal solid waste landfills (MSWLFs), will be referred to collectively as the ''Virginia Project XL Landfills''.

On September 29, 2000, EPA, USA Waste of Virginia, Inc., and King George Landfills, Inc., signed the Final Project Agreement (FPA) for this project, which would allow the addition of liquids to the landfills. This addition of liquids is expected to accelerate the biodegradation of landfill waste, decrease the time it takes for the waste to reach stabilization in the landfill, facilitate the management of leachate and other liquid wastes, and promote

recovery of landfill gas. The principal objectives of this XL project are to demonstrate that the alternative liners installed at the Virginia Project XL Landfills are as protective as the liner prescribed in EPA MSWLF regulations over which leachate recirculation is allowed under existing RCRA regulations, and to assess the effects of applying differing amounts of liquids to landfills. In order to carry out this project, Waste Management will need relief from certain requirements in EPA regulations which set forth design and operating criteria for MSWLFs, requirements which would otherwise preclude the addition of liquids at these landfills. Today's proposed rule would allow the Virginia Landfills to apply collected, non-containerized non-hazardous bulk liquids (including landfill leachate, as further described as follows) to the landfills.

This proposed rule would require compliance with each of the design, monitoring, record keeping, reporting, and operational requirements contained in this proposed rule, as well as MSWLF regulations not affected by this rule. Upon completion of the rulemaking, these requirements and conditions would be enforceable in the same way that current RCRA standards for solid waste landfills are enforceable to ensure that management of non-hazardous solid waste is performed in a manner that is protective of human health and the environment. Today's proposed rulemaking would not affect the provisions or applicability of any other existing or future regulations.

The Virginia XL Project Landfills comprise two of several landfills, located in different geographic and climactic regions across the country, that are testing bioreactor technology under Project XL. The bioreactor approach planned for the King George County Landfill involves application of about twice the quantity of liquid that is applied at the Maplewood Landfill. Other XL projects which are testing bioreactor techniques included the Yolo County, California XL Project (final rule published in the **Federal Register** at 66 FR 42441, August 13, 2001), and the Buncombe County, North Carolina XL Project (final rule published in the **Federal Register** at 66 FR 44061, August 22, 2001).

DATES: Public Comments: Comments on this proposed rule must be received on or before January 28, 2002.

Public Hearing: Commentors may request a public hearing by January 14, 2002 during the public comment period. Commentors must state the basis for requesting the public hearing. If EPA determines there is sufficient reason to hold a public hearing, it will do so no later than January 18, 2002, during the last week of the public comment period. If a public hearing is scheduled, the date, time, and location will be made available through a **Federal Register** notice or may be obtained by contacting Mr. Steven J. Donohue at the EPA Region 3 Office. If a public hearing is held, it will take place in Virginia.

ADDRESSES: Comments: Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please submit an original and two copies of all comments and refer to Docket Number F–2001–WVLP–FFFFF. A copy should also be sent to Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (1807) Washington DC 20460.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: *walker.sherri@epa.gov.* Electronic comments must be submitted as an ASCII, WordPerfect 5.1/6.1/7/8/9 format file and avoid the use of special characters or any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Request to Speak at Hearing: Requests to speak at a hearing should be mailed to the RCRA Information Center Docket Clerk (5303G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please send an original and three copies of all comments and refer to Docket Number F–2001–WVLP–FFFFF. A copy should also be sent to Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (1807) Washington DC 20460.

Viewing Projects Materials: A docket containing the proposed rule, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC) located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA Docket Number F–2001–WVLP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15 per page. Project materials are also available for review on the world wide web at: http://www.epa.gov/projectxl/virginialandfills/index.htm.

A duplicate copy of the docket is available for inspection and copying at the EPA Region 3 Library located at 1650 Arch Street, Philadelphia, PA 19103. Appointments can be scheduled by phoning the Library at (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Donohue at the U.S. Environmental Protection Agency, Region 3, (3EI00), 1650 Arch Street, Philadelphia, Pennsylvania 19103 or Ms. Sherri Walker at the U.S. Environmental Protection Agency, Office of Environmental Policy Innovation, 1200 Pennsylvania Ave. NW. (1807), Washington DC 20460. Mr. Donohue may be contacted at (215) 814–3215. Further information on today's action may also be obtained on the world wide web at *http://www.epa.gov/projectxl/.* Questions to EPA regarding today's action can be directed to Mr. Donohue at (215) 814–3215 *donohue.steven@epa.gov* or Ms. Walker at (202) 260–4295, *walker.sherri@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline of Today's Document

The information presented in this preamble is arranged as follows:

I. What Is EPA's Legal Authority To Promulgate Today's Proposed Rule?

This rule is proposed under the authority of Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6907, 6912, 6945, and 6949a).

II. Background

A. What Is Project XL?

Project XL is an EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—''eXcellence and Leadership''—was announced on March 16, 1995 as a central part of the National Performance Review and EPA's efforts to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Specifically, Project XL gives a limited number of regulated entities the opportunity to develop their own pilot projects and alternative strategies to achieve environmental performance that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other XL projects to determine which specific elements of the projects, if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Project XL is intended to allow EPA to experiment with new or pilot projects that provide alternative approaches to regulatory requirements, both to assess whether they provide benefits at the specific facility affected, and whether these projects should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site-or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project is not an indication that EPA plans to adopt that interpretation as a general matter or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are potentially viable in practice and successful for the particular projects that embody them. These pilot projects are not intended to be a means for piecemeal revision of entire programs.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site-or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress recognizes that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, e.g., § 8001 of RCRA, (42 U.S.C. 6981).

Under Project XL, participants in four categories (facilities, industry sectors, governmental agencies, and communities) are offered the opportunity to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: (1) Superior environmental performance; (2) cost savings and paperwork reduction; (3) stakeholder involvement and support; (4) test of an innovative strategy; (5) transferability; (6) feasibility; (7) identification of monitoring, reporting, and evaluation methods; and (8) avoidance of shifting risk burden. The project must have full support of affected federal, state, and tribal agencies (where applicable) to be selected, approved and implemented. For more information about the XL criteria, readers should refer to two descriptive documents published in the **Federal Register** (60 FR 27282, published May 23, 1995 and 62 FR 19872, published April 23, 1997) and the document entitled ''Principles for Development of Project XL Final Project Agreements,'' dated December 1, 1995.

Development of an XL Project has four basic phases: The initial pre-proposal phase where the project sponsor comes up with an innovative concept that it would like EPA to consider for the XL program; the second phase where the project sponsor works with EPA and interested stakeholders in developing its XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing the Final Project Agreements (FPA) and legal mechanisms. After the designated participants sign the FPA and after promulgation of the required federal, state and local legal mechanisms, the XL project is implemented and the results are evaluated.

The FPA is a non-binding written agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the proposed project. It addresses the eight Project XL criteria and discusses how EPA expects the project criteria to be met. The FPA identifies performance goals and indicators which will enable the project sponsor to demonstrate superior environmental benefits. The FPA also discusses administration of the agreement, including dispute resolution and conditions for termination of the agreement. On September 29, 2000, EPA Region 3 and Office of Solid Waste, joined by Virginia Department of Environmental Quality, and USA Waste of Virginia, Inc. signed the FPA for the project. The Final Project Agreement is available to the public at the EPA RCRA Docket in Washington, DC and at the EPA Region 3 Library in Philadelphia.

B. What Are Bioreactor Landfills?

A bioreactor landfill is generally defined as a landfill operated to transform and stabilize the readily and moderately decomposable organic constituents of the waste stream by purposeful control to enhance microbiological processes. Bioreactor landfills often employ addition of liquids such as leachate. A byproduct of the waste decomposition process is

landfill gas, which includes methane, carbon dioxide, hazardous air pollutants and volatile organic compounds (VOC). Landfill gases are produced sooner in a bioreactor than in a conventional landfill. Therefore, bioreactors typically incorporate state-of-the-art landfill gas collection systems to collect and control landfill gas upon start up of the liquid addition process.

On April 6, 2000, EPA published a notice in the **Federal Register** requesting information on bioreactor landfills, because the Agency is considering whether and to what extent the Criteria for Municipal Solid Waste Landfills, 40 CFR part 258, should be revised to allow for leachate recirculation over alternative liners in MSWLFs (65 FR 18015). EPA is seeking information about liquid additions and leachate recirculation in MSWLFs to the extent currently allowed, i.e., in MSWLFs designed and constructed with a composite liner as specified in 40 CFR 258.40(a)(2).

Proponents of bioreactor technology note that operation of MSWLFs as bioreactors provide a number of environmental benefits, including an increased rate of waste decomposition, which in turn would extend the operating life of the landfill and lessen the need for additional landfill space or other disposal options. Bioreactors also decrease, or at times eliminate, the quantity of leachate requiring treatment and offsite disposal. Several studies have shown that leachate quality improves over time when leachate is recirculated on a regular basis. For all of these reasons bioreactors are expected to decrease potential environmental risks and costs associated with leachate management, treatment and offsite disposal. Additionally, use of bioreactor techniques is expected to shorten the length of time the liner will be exposed to leachate and this should lower the long term potential for leachate migration into the subsurface environment. Bioreactors are also expected to reduce post-closure care costs and risks, due to the accelerated, controlled settlement of the solid waste during landfill operation. Finally, bioreactors provide for greater opportunity for recovery of methane gas for energy production since methane is produced earlier and in a larger quantity than a normal MSWLF.

EPA is implementing several additional related XL pilot projects involving operation of landfills as bioreactors throughout the country. These additional landfill projects will enable EPA to evaluate benefits of different alternative liners and leachate recirculation systems under various climatic and operating conditions. As expressed in the above-referenced April 2000 **Federal Register** notice, EPA is interested in assessing the performance of landfills operated as bioreactors, and these XL projects could contribute valuable data.

The Virginia Project XL Landfills and other XL projects would provide additional information on the performance of MSWLFs when liquids are added to the landfill. The Agency is also interested in assessing how different types of alternative liners perform when liquids are added to the landfill, including maintaining a hydraulic head at acceptable levels.

III. The Virginia Project XL Landfills

A. Overview

The Virginia Project XL Landfills consists of the Maplewood Landfill and the King George Landfill. The Maplewood Landfill is located in Amelia County, Virginia, approximately 30 miles southwest of Richmond, Virginia. The Maplewood Landfill will cover a total area of about 404 acres upon completion. Construction of the first phases started in 1992. Construction of the most recent phase was completed in 1997. The King George County Landfill is located in King George County, Virginia, approximately 50 miles north-northeast of Richmond, Virginia. The King George Landfill will cover a total area of about 290 acres upon completion. The first phase of liner system construction began in 1996. Construction of additional liner system areas has been performed every year since 1996.

The Maplewood Landfill is owned and operated by USA Waste of Virginia, Inc., and the King George Landfill is owned by King George County and operated by King George Landfills, Inc. USA Waste of Virginia, Inc. and King George Landfills, Inc. are both subsidiaries of Waste Management, Inc., and will be referred to collectively hereinafter as ''Waste Management.'' Maplewood Landfill and King George Landfill, both of which are municipal solid waste landfills (MSWLFs), will hereinafter be referred to collectively as the ''Virginia Project XL Landfills.''

B. Description of the Project

This proposed rule would provide for the addition of liquid wastes to certain areas of the Maplewood Landfill and the King George Landfill.

The goal for the Maplewood Landfill is to recirculate as much leachate as is generated at the facility. Based on facility records, the facility generated approximately 3,000,000 gallons of leachate in 1999 (a relatively dry year). Under this XL project, between 3,000,000 and 4,000,000 gallons of liquid would be applied at the landfill per year. The liquid application rate would be an average of 10,960 gallons per day, based on an application rate of 4,000,000 gallons per year. In order to comply with the requirements of the proposed rule and provide the appropriate test conditions for biodegradation of the waste, the exact liquid application rate will be determined by Waste Management during implementation of the project. The proposed project area in the Maplewood Landfill will be in ''Phase Development Areas'' 1 and 2 (leachate recirculation areas) and 3, 4, and 11 (monitored control areas without leachate recirculation). The total size of the Phase 1, 2, 3, 4 and 11 Phase Development Areas is approximately 48 acres.

During dry periods of lower or no leachate generation, liquids other than leachate could also be added, including non-hazardous liquids such as storm water and truck wash water. The liquids would be applied in trenches, excavated into the surface of the landfill in the Phases 1 and 2 areas (approximately 10 acres in size). Phases 3, 4, and 11 will be used as control cells—no liquid will be applied to these areas, only rainwater that naturally falls and percolates beneath the landfill surface will enter the waste in these areas or phases.

The goal for the King George County Landfill is to recirculate as much leachate as is generated at the facility and to add sufficient additional liquid to make a total liquids application of between 7,000,000 and 8,000,000 gallons per year. Based on facility records for the past three years, the facility generates approximately 3,500,000 gallons of leachate per year. Based on estimates of storm water runoff quantities and the storage capacity of the storm water management ponds at the site, approximately 8,000,000 gallons or more of storm water is expected to be made available for application to the landfill waste. The liquid application rate would be, on average, about 22,000 gallons per day based on an estimated application rate of 8,000,000 gallons per year. In order to comply with the requirements of the proposed rule and provide the appropriate test conditions for biodegradation of the waste, the exact liquid application rate will be determined by Waste Management during implementation of the project.

The overall study area in the King George Landfill will be established within the Municipal Solid Waste Cells

2, 3, and 4. The total size of Cells 2, 3, and 4 is approximately 59 acres. Liquid will be applied only in Cell 3, approximately 10 acres in size. Cells 2 and 4 will be control cells in which no liquids will be applied. Cell 1 was being filled with waste in July 2001.

As stated earlier, the bioreactor program that would be implemented at the King George County Landfill involves application to the waste of about twice the quantity of liquid that is applied at the Maplewood Landfill. In the bioreactor at this landfill, conditions will be established that are intended to significantly increase the rate of degradation of waste during the operating life of the landfill to achieve the benefits identified in the FPA. Although the process of recirculating leachate provides much of the moisture needed to enhance biological degradation of waste, research reported in ''Active Municipal Waste Landfill Operations: A Biochemical Reactor'' Reinhart, 1995 (Reinhart 1995) found that the quantity of liquid needed to reach water holding or field capacity of the waste to potentially maximize the rate of biodegradation is typically much greater than the quantity of leachate generated at a MSWLF. The Reinhart 1995 report is available for review in the docket for this proposed rule. As part of the comparison of different rates of liquid addition inherent in this project, sources of liquid other than leachate will be used to supply the additional quantity of liquid needed at the King George Landfill. These sources could include storm water, truck wash water and other non-hazardous liquid waste. For this project, these liquids may be discharged into the landfill leachate storage tanks to supplement the leachate and the resulting mixture would then be distributed over the bioreactor test area.

The liquids application system at both Virginia XL landfills will be constructed using typical trench construction methods and may include other methods developed during the implementation of the program. The construction methods are described in detail in the Application for Project XL Landfill Bioreactor Systems King George County Landfill and Maplewood Recycling and Waste Disposal Facility, submitted to U.S. EPA, prepared by GeoSyntec Consultants, May 30, 2000 (May 2000, GeoSyntec Report). The May 2000, GeoSyntec Report can be found in the docket for this proposed rule.

The liquids infiltration or ''application capacity'' of each landfill is the amount of liquid that can be expected to flow by gravity from all of the trenches. This quantity has been estimated using the methodology described in ''Analysis Procedures for Design of Leachate Recirculation Systems,'' T.B. Maier in June, 1998. The T.B. Maier report can be found in the docket for this proposed rule. This method involves estimating the moisture content of the waste (typically 15 to 25 percent without liquid application), the hydraulic properties of the waste, the moisture retention capacity (field capacity) of the waste (typically 40 percent), and the head of liquid on the trench. Using this information, the infiltration rate of liquid into the waste from one 400 foot long trench is calculated; the total application capacity equals the combined infiltration rate of all six trenches. As shown in the May 2000, GeoSyntec Report, the total application capacity of the group of six trenches is calculated to be about 110,000 gallons per day, which is much greater than the proposed average application rate of either 10,960 gallons per day or the 22,000 gallons per day for Maplewood and King George Landfills, respectively. The exact number and length of the trenches will be determined during the implementation of the project but at a minimum will be adequate to provide for the proposed average application rates. The May 2000, GeoSyntec Report can be found in the docket for this proposed rule.

EPA's RCRA MSWLF operating criteria require that MSWLFs be designed and constructed with a leachate collection system that can ensure a hydraulic head (leachate layer) above the liner of 30 centimeters (cm) or less, *i.e.,* approximately 12 inches. The operator must monitor the depth of liquid (or thickness of ''head'') and ensure no more than 30 cm of head is on the liner. The impact of the proposed liquid application activities on the thickness of head on the liner systems was evaluated using the Hydrologic Evaluation of Landfill Performance (HELP) model. This model is in the May 2000, GeoSyntec Report and is available in the docket for this proposed rule. First, the hydrologic evaluation was performed assuming that no liquid is applied; then, the evaluation was performed for the liquid application condition under the assumptions that 4,000,000 and 8,000,000 gallons per year would be recirculated at the Maplewood and King George Landfills, respectively. These calculations show that a head of 30 cm or less is expected on both the Maplewood and the King George liner. The King George Landfill is expected to maintain a lower head than the Maplewood Landfill because the drainage layer material at the King George landfill is approximately 100 times more permeable than the drainage layer material at the Maplewood landfill. This is why King George was selected for an application rate of twice the volume of liquids that will be applied to the Maplewood Landfill.

The primary liner system of both landfills is underlain by a secondary liner and leachate collection system. Sumps are located at the low point of each cell in each system and will be monitored for the depth of liquid on a monthly basis. As needed and required, liquid in the sumps is collected and controlled as leachate. Samples are collected to evaluate the characteristics of the liquids. If the test results from the sampled liquid or the monitoring of the leachate level indicate that there is a potential leak in the primary liner system, then the need for a larger pump will be evaluated and the liquid level in the primary system will be further evaluated and monitored to minimize the liquid depth above the primary liner. The liner leakage rate will be evaluated and the leachate injection rate may be reduced, if necessary, to control the rate of flow into the secondary leachate collection system. Waste Management will monitor the depth of liquid on the liners of both landfills throughout the XL Project period, and will ensure that less than the 30 cm maximum head is maintained, in accordance with regulations. This proposed rule would not alter Waste Management's obligation to maintain less than 30 cm of head on the liners at both Virginia XL landfills.

It is necessary that the on-site leachate storage structures at both the Virginia Project XL Landfills have enough capacity to store the leachate needed for later application to the test areas in the landfills. Liquid will be collected and stored for application when conditions are relatively dry. The storage capacity of the leachate tanks at the Maplewood Landfill is approximately 500,000 gallons, this represents approximately a two months supply of leachate at a application rate of 4 million gallons per year.

During operation of the bioreactor system, leachate storage structures will also be used to temporarily store leachate at times when it is not or cannot be recirculated. As a minimum, the tanks will need to store the quantity of leachate generated over a period of several days. The May 2000, GeoSyntec Report states that the Maplewood Landfill generated approximately 3 million gallons of leachate in 1999. The 500,000 gallon storage at Maplewood Landfill represents over a two month storage capacity of leachate at a

generation rate of 3 million gallons per year. Therefore, the facility has adequate leachate storage capacity for operation of the bioreactor system. As a contingency, during times when leachate generation exceeds the rate of recirculation in and storage capacity, leachate could be hauled off-site as is currently being done.

In the May 2000, GeoSyntec Report, Waste Management's consultant evaluated the physical stability of the waste at the Virginia Project XL Landfills under bioreactor operating conditions. GeoSyntec Consultants submitted this engineering evaluation to the Virginia Department of Environmental Quality (VADEQ) as a part of their application for a permit modification for the bioreactor testing at the Virginia Project XL Landfills. A static stability analysis conducted for the slopes of the Virginia XL Landfills shows a factor of safety (FOS) of greater than the minimum value of 1.5 was maintained even with the addition of the liquid application trenches and a phreatic or subsurface leachate/water table surface in the landfill cell associated with the addition of liquids in the trench. The calculated FOS for the existing conditions and under the leachate recirculation scenarios remained unchanged in both the Virginia Project XL Landfills since the critical failure surface is located outside the areas that will be wetted by liquid addition during the bioreactor testing or the added liquid does not change the location of the critical surface. The GeoSyntec stability evaluation can be found in the docket for this proposed rule.

EPA and Waste Management expect that the addition of liquids to the landfills will accelerate the production of landfill gases; indeed, one of the benefits of bioreactor landfills is that the time interval during which landfill gas is generated should be compressed, thereby facilitating its collection and potential conversion to a useful energy source. Landfill gas generation will start sooner and end sooner in landfills where liquids are recirculated. EPA's Standards of Performance for Municipal Solid Waste Landfills, 40 CFR part 60, subpart WWW, requires large landfills that meet the emissions threshold to perform landfill gas monitoring and install a collection and control system as specified in the regulation in areas where wastes are over a certain age. Effective November 1999, Waste Management installed, and is operating, an active (*i.e.* vacuum induced) landfill gas collection system in Phases 1, 2 and 3 at the Maplewood Landfill. An active gas collection system became operational at the King George Landfill on December 10, 2000. In addition, on September 1, 2001 Waste Management signed an agreement with a private energy development company to construct a 9MW power plant fueled by landfill gas at the Maplewood Landfill. Waste Management is currently negotiating a similar gas/energy recovery agreement for the King George Landfill.

This XL Project will comply with the subpart WWW performance standards for MSWLFs under the federal Clean Air Act. Waste Management will continue to provide subpart WWW-compliant landfill gas monitoring, collection and control during and following the application of liquids at the landfills. Waste Management's obligations with respect to landfill gas will be set forth in a Federally Enforceable State Operating Permit (FESOP). The VADEQ is the regulatory agency which, under the federal Clean Air Act, has air permitting authority for both landfills. The VADEQ has issued a New Source Review Permit 9 VAC 5–80–10 (NSR) for the King George Landfill which contains the enforceable parameters and requirements reflecting the New Source Performance Standards (NSPS)—compliant gas collection, control and monitoring. In addition, on July 31, 2001, VADEQ issued a Title V Operating Permit 9 VAC 5–80–50 et. seq. (Title V), for the King George Landfill. Both the Title V permit and the underlying NSR permit issued by VADEQ are considered Federally enforceable. An NSR Permit for the Maplewood Landfill is under development. An NSR Permit will be in place for each landfill prior to the addition of liquids, and will include at least the following provisions:

1. Waste Management will enhance the gas collection and control systems at the landfills (e.g. using additional extraction wells or trenches or by enhancing the cover over affected areas.) This will be done at the discretion of Waste Management, or as directed by VADEQ, if it is determined that there is a potential to exceed the applicable air quality permit requirements or New Source Performance Standards during evaluation of routine monitoring data or if odor problems or air quality problems occur. The system will be expanded as needed (e.g., using additional extraction wells or trenches or by placing additional cover or tarps over affected areas) to ensure compliance with the applicable air quality permit requirements.

2. The performance of the landfill gas extraction systems at the Virginia Project XL Landfills will be documented and assessed by obtaining monitoring data from the gas extraction wells and the landfill surface for parameters such as methane, carbon dioxide, oxygen, non-methane organic compounds (NMOCs) and other constituent concentrations, in accord with 40 CFR part 60, subpart WWW. The gas temperature at the well heads will also be monitored as required by subpart WWW.

3. A baseline round of air monitoring at each landfill will be completed prior to the introduction of liquids, and the monitoring will continue for the duration of the project.

4. Collected landfill gas will be controlled through the use of an active gas control system at both sites.

The site stakeholders, listed in Section F of today's proposed rule, recognize that the increased production of landfill gas may result in an increase in the flow rate of NO_X emissions from any flares or other gas processing equipment installed as part of the project. Air quality permits for these emissions may need to be amended to allow the implementation of the XL Project.

In the FPA Waste Management committed to exploring alternative uses for the collected gas other than flaring. On September 1, 2001 Waste Management signed an agreement with a private energy development company to construct a 9MW power plant fueled by landfill gas at the Maplewood Landfill. Waste Management is currently negotiating a similar agreement for the King George Landfill.

C. What Kind of Liner Is Required by Current Federal Regulations?

Currently, the federal regulations outline two methods for complying with liner requirements for municipal solid waste landfills. The first method is a performance standard set out under 40 CFR 258.40(a)(1). This standard allows installation of any liner configuration provided the liner design is approved by the director of an approved state (defined in § 258.2) and the design ensures that certain constituent concentrations are not exceeded in the uppermost aquifer underlying the landfill facility at the point of compliance.

The second method is set out in 40 CFR 258.40(a)(2) and (b). § 258.40(b) specifies a liner design which consists of two components: (1) An upper component comprising a minimum of 30 mil flexible membrane liner (60 mil if High Density Polyethylene (HDPE) is used); and (2) a lower component comprising at least two feet of compacted soil with a hydraulic

conductivity no greater than 1×10^{-7} cm/sec.

D. How Are the Liners at the Virginia XL Landfills Constructed?

Both the Maplewood Landfill and the King George County Landfill were constructed to meet or exceed the performance standard set forth in 40 CFR 258.40(a)(1). The liner under each landfill was built with a geomembrane double synthetic liner systems, with primary leachate collection and leak detection (secondary collection) layers. The King George County liner and leachate collection system consists, from top to bottom, 1.5 feet of protective cover, leachate drainage material, 16 oz./square yard nonwoven geotextile, 60 mil textured HDPE primary geomembrane liner, a geosynthetic clay liner, geocomposite drainage layer, 60 mil textured HDPE secondary geomembrane liner, geosynthetic clay liner, 40 mil textured HDPE tertiary geomembrane liner and 1 foot of geologic buffer material with a permeability (k) of $<1\times10^{-5}$ cm/sec. The Maplewood Landfill liner and leachate collection system consists of, from top to bottom, 1.5 feet of primary granular drainage layer, 60 mil HDPE geomembrane, geonet layer, 60 mil HDPE geomembrane, bentonite geocomposite, underlain by 1.5 feet of a clayey soil liner with a permeability (k) of $<1\times10^{-5}$ cm/sec. The liner systems for the two landfills are illustrated in Figure 2 of the Final Project Agreement.

The 60 mil HDPE upper liner component of both landfills' liners meets the specified upper membrane liner component under RCRA (40 CFR 258.40(b). However, instead of a lower liner component comprised of at least two feet of compacted soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec, the Virginia XL Landfills were built with a second geosynthetic 60 mil HDPE layer. Additionally, beneath the double liner system at the King George County is a third 40 mil HDPE liner, underlain by one foot of soil compacted to a permeability (k) of $<1\times10^{-5}$ cm/sec., and the double liner system at the Maplewood Landfill is underlain by 18 inches of soil compacted to a permeability (k) of $<1\times10^{-5}$ cm/sec.

While the landfills do not have a composite liner as specified in the Design Criteria § 258.40 (b), the alternative liner systems meet or exceed the performance requirements for municipal solid waste landfills. Indeed, these landfills' double-liner systems provide a high level of protection to the environment against potential impacts caused by leakage of leachate.

E. What Environmental Benefits Would Result From the Proposed Bioreactor Landfill Project Proposal?

The expected superior environmental benefits from the Virginia Landfills XL Project include: (1) Landfill life extension; (2) minimizing the potential for long-term leachate-associated groundwater and offsite surface water concerns; and (3) increasing landfill gas control, minimizing fugitive methane and VOC emissions and minimizing the duration of gas generation.

1. Landfill Life Extension

The life of a landfill, when operated as a bioreactor, should be extended due to the biodegradation of the waste. This more rapid biodegradation increases the apparent density and decreases the volume of the in place waste remaining in the landfill. Reducing the volume of waste translates into either longer landfill life and/or less need for additional landfill space. Thus, this bioreactor landfill will be able to accept more waste over its working lifetime (subject to applicable State regulatory requirements). Additionally, less landfill space may be needed to accommodate the same amount of waste.

2. Minimizing Leachate/Groundwater-Associated Concerns

Research reported in Reinhart 1995, has shown that bioreactor processes tend to reduce the concentration of many pollutants in leachate, including organic acids and other soluble organic pollutants. Bioreactor operations brings pH to near-neutral conditions and generally, metals are much less mobile under these condition. Reinhart 1995 found that metals were largely precipitated and immobilized in the waste of bioreactor landfills. This report can be found in the docket for this proposed rule. Discussions between Waste Management, the VADEQ, and the host communities for the Maplewood Landfill and the King George County Landfills, indicated that groundwater-related issues are of primary concern to the stakeholders, including minimizing the long-term threat to groundwater quality. This project should provide for accelerated biodegradation of the waste in the landfills and, thereby, minimizing the potential for the waste to present a long-term threat to groundwater quality. Routine groundwater monitoring is, and will continue to be, performed to verify containment. Cleaner leachate also translates into decreased load on the offsite publicly owned treatment works (POTWs) where the leachate from these landfills is now being treated. As described in Section 1.2 of the FPA, both the Maplewood and King George County Landfills were constructed with double-liner systems, which are highly efficient at preventing leakage of leachate from landfills.

3. Maximizing Landfill Gas Control and Minimizing Fugitive Methane and VOC Emissions

Landfill gas contains roughly 50% methane, a potent greenhouse gas. In terms of climate effects, methane is second in importance only to carbon dioxide as a greenhouse gas. Landfill gas also contains volatile organic compounds (VOC's) that are air pollutants of local concern. While the rate of gas generation will be increased by adding liquids to the landfills, the period of post closure landfill gas generation will be compressed. The existing, active gas collection systems in operation at both landfills is expected to efficiently collect and control landfill gas. The system will be maintained and monitored in accordance with the terms of 40 CFR part 60, subpart WWW and all applicable permits. In addition, on September 1, 2001 Waste Management signed an agreement with a private energy development company to construct a 9MW power plant fueled by landfill gas at the Maplewood Landfill. Waste Management is currently negotiating a similar gas/energy recovery agreement for the King George Landfill.

It is also anticipated that the information obtained from this XL Project will provide the EPA and the waste disposal industry with data concerning the use of bioreactor techniques at MSWLF sites throughout the United States, in accord with the Agency' April 6, 2000 Request for Information and Data regarding Alternative Liner Performance, Leachate Recirculation, and Bioreactor Landfills, 65 FR 18014 (April 6, 2000).

F. How Have Various Stakeholders Been Involved in This Project?

Initial public meetings were held on August 1, 2000 (King George County) and August 2, 2000 (Amelia County) to solicit comments from the public on the intent of the sponsors to participate in Project XL. Additional public meetings were also held during the week of September 4, 2000 in King George and Amelia County to discuss the draft FPA with the citizens from these localities. Since both landfills have valid state operating permits, the VADEQ intends to amend the permits to allow the construction and operation of the bioreactor systems as an experimental

process. Before VADEQ issues a permit amendment, a public hearing will be held in the locality to solicit comments on the draft permit amendments from concerned citizens. The details of the permit amendments for each landfill are outlined in advertisements along with contact information and document viewing locations. The public hearing is also advertised in a local paper. The VADEQ has a standardized mailing list of state agencies to whom a draft permit or notice of permit amendment can be sent to solicit comments. Conditions may be imposed due to additional state requirements or as a result of public comment.

In accord with VADEQ regulatory requirements, Virginia will hold public meetings and hearings on the proposed amendments to the solid waste construction and operating permits for the Virginia Project XL Landfills. If requested, these public hearings will be supplemented with additional stakeholder meetings. A stakeholder mailing list maintained by Waste Management will be updated as necessary to include private citizens and other interested parties. Periodically, progress reports and other relevant information will be distributed. If requested, Waste Management has also agreed to provide site tours and briefings to better educate any interested citizens or stakeholders. Transcripts and video tape recordings of all public meetings and hearings will be maintained at the repositories. A repository for the project will be maintained by VADEQ at 629 East Main Street, Richmond, VA, 23219 c/o Paul Farrell, (804) 698–4214. Additional copies of the repository records will be maintained in the James Hamner Memorial Library, 16351 Dunn Street Amelia, Virginia 23002 and in the L.F. Smoot Lewis Memorial Library, 9533 Kings Highway, King George, Virginia 22485. A public file on this XL project has been maintained at the website at: *http://www.epa.gov/ProjectXL/virginialandfills/index.htm* Throughout project development, EPA will continue to update the website as the project is implemented. A detailed description of the XL Project and the stakeholder support for this project is included in the Final Project Agreement, which is available through the docket or through EPA's Project XL website on the Internet.

Waste Management will periodically meet with a representative from each local landfill advisory committee or the entire stakeholder group to discuss issues of concern and to disseminate information. To solicit additional stakeholder involvement, Waste Management may do outreach including contacting nationwide professional and citizen groups that may have an interest in bioreactor technology and will attempt to disseminate information to its members, as well as, attend national workshops or seminars.

The following have been identified as VA Project XL Bioreactor Landfill stakeholders:

Direct Participants:

- U.S. Environmental Protection Agency
- Virginia Department of Environmental Quality
- Waste Management, Inc.
- King George County Landfill
- Maplewood Landfill
- Maplewood Recycling Waste Disposal Facility

Commentors:

- Members of Local Landfill Advisory Committees

G. How Will This Project Result in Cost Savings and Paperwork Reduction?

As stated earlier, this project is expected to result in cost savings by virtue of assisting in an increased rate of decomposition of the waste placed in certain areas of the two Virginia Project XL Landfills, and to improve the quality of leachate generated in those areas. The increased decomposition rate is, in turn, expected to extend the life of the landfill, and, potentially, result in direct cost savings to Waste Management from its landfills more efficient use and decreased leachate treatment and disposal costs. In addition, the methane generation and recovery operations are expected to yield increased methane recovery over a shorter time period, thereby facilitating the further evaluation and possible use of the methane for energy generation. No appreciable direct reduction in paperwork is anticipated at the Virginia landfills.

H. How Long Will This Project Last and When Will It Be Complete?

As with all XL projects testing alternative environmental protection strategies, the term of this XL Project is limited. Today's proposed rule would be in effect for 10 years. In the event that EPA determines that this project should be terminated before the end of the 10 year period and that the site-specific rule should be rescinded, the Agency may withdraw this rule through a subsequent rulemaking. This would allow all interested persons and entities the opportunity to comment on the proposed termination and withdrawal of regulatory authority. In the event of an early termination of the project term , EPA or the state would establish an interim compliance period, not to exceed six months, such that Waste Management will be returned to full compliance with the existing requirements of 40 CFR part 258. In accordance with 9 VAC 20–80–480.G, VADEQ expects to utilize an experimental permit to provide for operation of the VA Project XL Landfills as bioreactors. If the XL Project proves to be feasible, VADEQ expects to modify the permit for the facility to provide for the ten year XL Project term.

The FPA allows any party to the agreement to withdraw from the agreement at any time before the end of the 10 year period. It also sets forth several conditions that could trigger an early termination of the project, as well as procedures to follow in the event that EPA, the State or local agency seeks to terminate the project (see FPA section 11).

For example, an early conclusion would be warranted if the project's environmental benefits do not meet the Project XL requirement for the achievement of superior environmental results. In addition, new laws or regulations may become applicable during the project term which might render the project impractical, or might contain regulatory requirements that supersede the superior environmental benefits that are being achieved under this XL Project. Or, during the project duration, EPA may decide to change the federal rule allowing recirculation over alternative liners and the addition of outside bulk liquids for all Subtitle D landfills. In that event, the FPA and site-specific rule for this project would no longer be needed.

IV. What Regulatory Changes Will Be Necessary To Implement This Project?

A. Existing Liquid Restrictions for MSWLFs (40 CFR 258.28)

This proposed site specific regulation would grant regulatory relief from certain requirements of RCRA that restrict application of liquids in these MSWLFs, because as previously described, both the Maplewood and King George landfills were constructed with alternative liners pursuant to 40 CFR 258.40(a)(1). When the FPA for this project was signed, RCRA regulations, 40 CFR 258.28(a) allowed bulk or noncontainerized liquid waste to be added to a MSWLF only if the following two conditions were met:

—The liquids comprise household waste (other than septic waste), or leachate from the landfill itself, or gas condensate derived from the landfill, and

—The MSWLF has been built with a liner designed as prescribed in the design standard set forth in 40 CFR 258.40 (a)(2) (i.e. not the performance standard set forth in 40 CFR 258.40(a)(1)).

Since then, EPA promulgated a site-specific rule for the Yolo County, CA bioreactor landfill project under Project XL, which amended § 258.28(a). The amendment allows bulk liquid wastes to be added to a MSWLF if ''the MSWLF unit is a Project XL MSWLF and meets the applicable requirements of § 258.41'' 66 FR 42441, 42449 (August 13, 2001). Therefore, the regulatory relief needed for the VA Project XL landfills is a site-specific amendment to 40 CFR 258.41.

B. Proposed Site-Specific Rule

The Maplewood landfill project would provide for addition of liquids primarily consisting of leachate from the landfill, while the King George bioreactor would involve the addition of leachate generated at this facility plus other liquids, including non-containerized liquids such as storm water, truck wash water and other non-hazardous liquid waste. Further information on the liquids proposed for addition to the Maplewood and King George Landfills can be found in the FPA in Section 2.2.2.1 and 2.2.2.2, respectively. Today's proposal would add a new subsection of the rules in § 258.41. New § 258.41(c) would specifically apply to the Maplewood Landfill, in Amelia County, Virginia and the King George Landfill, in King George County, Virginia, and would allow leachate to be applied to these two landfills.

The proposed rule would impose certain minimum monitoring, reporting, and control requirements on Waste Management, which, among other things, will ensure that the project is protective of human health and the environment, and to facilitate EPA's evaluation of the project. The project monitoring and reporting requirements are listed in Sections 2.2.1.4, 2.2.1.5, 2.2.2.4, and 2.2.2.5, Table 6 and 6A of the FPA and would require that Waste Management provide semi-annual reporting of the monitoring data to stakeholders and regulators in order to facilitate project evaluation.

Existing regulation also requires a leachate collection system as specified in § 258.40(a)(2) to ensure that contaminant migration to the aquifer is controlled. (56 FR 50978, 51056 (Oct. 9, 1991)). The proposed rule would not change the requirement in § 258.28(a)(2) that a leachate collection system (as described in § 258.40(a)(2)) be in place in order for leachate to be recirculated in the landfill unit, and Waste Management would still be required to ensure that leachate collection systems at the landfills maintain the leachate head over the liner at a depth of less than 30 cm.

V. Additional Information

A. How To Request a Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding this proposed rulemaking, in accordance with 40 CFR part 25. Persons wishing to make an oral presentation on the proposed site specific rule for the Virginia Project XL Landfills should contact Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (1807) Washington DC 20460. Any member of the public may file a written statement before the hearing or after the hearing to be received by EPA no later than fourteen days after publication of this proposed rulemaking. Written statements should be sent to EPA at the addresses given in the Addresses section in the preamble of this document. If a public hearing is held, a verbatim transcript of the hearing and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the Addresses section of this preamble.

B. How Does This Rule Comply With Executive Order 12866: Regulatory Planning and Review ?

Because this rule affects only two facilities, it is not a rule of general applicability and therefore not subject to OMB review under Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary.

C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and public comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The project sponsor, Waste Management Inc., is the regulated entity for this pilot project. They are not a small business. This rule does not apply to small businesses, small not-for-profit enterprises, nor small governmental jurisdictions. Further, it is a site-specific rule with limited applicability to only two landfills in the nation. Therefore, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act ?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It is exempt from OMB review under the Paperwork Reduction Act because it is a site specific rule, directed to fewer than ten persons. 44 U.S.C. 3502(3), (10); 5 CFR 1320.3(c), 1320.4 and 1320.5.

E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act ?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments in the aggregate or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the

development of the EPA regulatory proposal with significant Federal mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. As used here, ''small government'' has the same meaning as that contained under 5 U.S.C. 601(5), that is, governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.

As discussed above, this proposed rule would have limited application. It applies only to the Maplewood and King George County Landfills. If adopted, this proposed rule would result in a cost savings for Waste Management when compared with the costs it would have had to incur if required to adhere to the requirements contained in the current rule. EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, or tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant,'' as defined in Executive Order 12886; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to potentially effective and feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed rule would allow for the addition of bulk or non-containerized liquid amendments over a liner that does not meet the design requirements in 40 CFR. 258.40(b), however, the liner systems meet or exceed the performance requirements for municipal solid waste landfills. Indeed, these landfills' double-liner systems provide a high level of protection to the environment against potential impacts caused by leakage of leachate. Therefore, no additional risk to public health, including children's health, is expected to result from this proposed rule.

G. How Does This Rule Comply With Executive Order 13132: Federalism?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase, ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal would only affect two local governmental entities and a state, and would provide regulatory flexibility for the state and local governmental entity concerned. Thus, Executive Order 13132 does not apply to this rule.

H. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Governments?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

I. How Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless such practice is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking however, does not involve any voluntary consensus standards.

J. Does This Rule Comply With Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use?

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 258

Environmental protection, Landfill, Solid waste.

Dated: December 19, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth, part 258 of Chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS—[AMENDED]

1. The authority citation for Part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

Subpart D—Design Criteria

2. Amend ''258.41 to add a new paragraph (c) to read as follows:

§ 258.41 Project XL Bioreactor Landfill Projects.

* * * * *

(c) *Virginia Landfills XL Project Requirements.* Paragraph (c) of this section applies solely to two Virginia landfills operated by the Waste Management, Inc. or its successors: The Maplewood Recycling and Waste Disposal Facility, located in Amelia County, Virginia (''Maplewood Landfill''); and the King George County Landfill and Recycling Facility, located in King George County, Virginia (''King George Landfill'') collectively hereinafter, ''the VA Project XL Landfills or landfill.'' The VA Project XL Landfills are allowed to add non-hazardous bulk or non-containerized liquids including, leachate, storm water and truck wash water, hereinafter, ''liquid or liquids'', to Cell 3 of the King George Landfill (hereinafter ''Cell 3'') and Phases 1 and 2 of the Maplewood Landfill (hereinafter ''Phases 1 and 2'') under the following conditions:

(1) The operator of the landfill shall maintain the liners underlying Cell 3 and Phases 1 and 2, which were designed and constructed with an alternative liner as defined in § 258.40(a)(1) in accord with their current installed design in order to maintain the integrity of the liner system and keep it and the leachate collection system in good operating order. The operator of the landfill shall ensure that the addition of any liquids does not result in an increased leakage rate, and does not result in liner slippage, or otherwise compromise the integrity of the landfill and its liner system, as determined by the State Director. In addition, the leachate collection system shall be operated, monitored and maintained to ensure that less than 30 cm depth of leachate is maintained over the liner.

(2) The operator of the landfill shall ensure that the concentration values listed in Table 1 of § 258.40 are not exceeded in the uppermost aquifer at the relevant point of compliance for the landfill, as specified by the State Director, under § 258.40(d).

(3) The operator of the landfill shall monitor and report whether surface seeps are occurring and determine whether they are attributable to operation of the liquid application system. EPA and VADEQ shall be notified in the semi-annual report of the occurrence of any seeps.

(4) The operator of the landfill shall determine on a monthly basis the leachate quality in test and control areas with and without liquid addition. The operator of the landfill shall collect monthly samples of the landfill leachate and analyze them for the following parameters: pH, Conductivity, Dissolved Oxygen, Dissolved Solids, Biochemical Oxygen Demand, Chemical Oxygen Demand, Organic Carbon, Nutrients (ammonia, total kjeldahl nitrogen, total phosphorus), Common Ions, Heavy Metals and Organic Priority Pollutants.

(5) The operator of the landfill shall determine on a semi-annual basis the total quantity of leachate collected in test and control areas; the total quantity of liquids applied in the test areas and determination of any changes in this quantity over time; the total quantity of leachate in on-site storage structures and any leachate taken for offsite disposal.

(6) Prior to the addition of any liquid to the landfill, the operator of the landfill shall perform an initial characterization of the liquid and notify EPA and VADEQ of the liquid proposed to be added. The parameters for the initial characterization of liquids shall be the same as the monthly parameters for the landfill leachate specified in paragraph (c)(4) of this section. The operator shall annually test all liquids added to the landfill and compare these results to the initial characterization.

(7) The operator of the landfill shall ensure that Cell 3 and Phases 1 and 2 are operated in such a manner so as to prevent any landfill fires from occurring. The operator of the landfill shall monitor the gas temperature at well heads, at a minimum, on a monthly basis.

(8) The operator of the landfill shall perform an annual surface topographic survey to determine the rate of the settlement of the waste in the test and control areas.

(9) The operator of the landfill shall monitor and record the frequency of odor complaints during and after liquid application events. EPA and VADEQ shall be notified of the occurrence of any odor complaints in the semi-annual report.

(10) The operator of the landfill shall collect representative samples of the landfill waste in the test areas on an annual basis and analyze the samples for the following solid waste stabilization and decomposition parameters: Moisture Content, Biochemical Methane Potential, Cellulose, Lignin, Hemi-cellulose, Volatile Solids and pH.

(11) The operator of the landfill shall report to the EPA Regional Administrator and the State Director on the information described in paragraphs (c)(1) through (10) of this section on a semi-annual basis. The first report is due within 6 months after the effective date of this section. These reporting provisions shall remain in effect for the duration of the project term.

(12) Additional monitoring, record keeping and reporting requirements related to landfill gas will be contained in a Federally Enforceable State Operating Permit (''FESOP'') for the VA Project XL Landfills issued pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.* Application of this site-specific rule to the VA Project XL Landfills is conditioned upon the issuance of such a FESOP.

(13) This section will remain in effect until [10 years after the effective date of the final rule]. By [date 10 years after the effective date of the final rule], the VA Project XL Landfills must return to compliance with the regulatory requirements which would have been in effect absent the flexibility provided through this section. If EPA Region 3's Regional Administrator, the Commonwealth of Virginia and Waste Management agree to an amendment of the project term, the parties must enter into an amended or new Final Project Agreement for any such amendment.

(14) The authority provided by this section may be terminated before the end of the 10 year period in the event of noncompliance with the requirements of paragraph (c) of this section, the determination by the EPA Region 3's Regional Administrator that the project has failed to achieve the expected level of environmental performance, or the promulgation of generally applicable requirements that would apply to all landfill that meet or exceed the performance standard set forth in 40 § 258.40(a)(1). In the event of early termination EPA in consultation with the Commonwealth of Virginia will determine an interim compliance period to provide sufficient time for the operator to return the landfills to compliance with the regulatory requirements which would have been in effect absent the authority provided by this section. The interim compliance period shall not exceed six months.

[FR Doc. 01–31939 Filed 12–27–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Centers for Disease Control and Prevention

42 CFR Part 493

[CMS–2094–P]

RIN 0938–AK83

Medicare, Medicaid, and CLIA Programs; Qualification Requirements for Directors of Laboratories Performing High Complexity Testing

AGENCY: Centers for Disease Control and Prevention (CDC) and Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and expand the qualification requirements by which an individual with a doctoral degree may qualify to serve as a director of a laboratory that performs high complexity testing.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 28, 2002.

ADDRESSES: Mail written comments (one original and three copies) to the following addresses:

Centers for Disease Control and Prevention, Department of Health and Human Services, Attention: CMS–2094–P, 4770 Buford Hwy., NE., MS F11, Atlanta, Georgia 30341–3724; and

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2094–P, P.O. Box 8018, Baltimore, MD 21244–8018

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8018.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–2094–P.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For information on ordering copies of the **Federal Register** containing this document and electronic access, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Rhonda S. Whalen (CDC), (770) 488–8155. Cecelia Hinkel (CMS), (410) 786–3531.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–12–17 of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. To schedule an appointment to review public comments, phone: (410) 786–9994.

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

On February 28, 1992, we published a final rule with comment period in the **Federal Register** (57 FR 7002). The regulation set forth the requirements for laboratories that are subject to the Clinical Laboratory Improvement Amendments of 1988 (CLIA). The regulation established uniform requirements for all laboratories regardless of location, size, or type of testing performed. In developing the regulation, we included requirements that we believed would ensure the quality of laboratory services and be in the best interest of the public health. We recognized that a rule of this scope required time for laboratories to understand and implement the new requirements. Therefore, certain requirements were given prospective effective dates.

The February 28, 1992 rule extended the timeframe to allow a director of a laboratory performing high complexity testing to be certified by a board approved by the Department of Health and Human Services (HHS). This extension allowed time for laboratory directors who were not board certified to complete the certification requirements and for HHS to review and approve certification boards. Until December 31, 2002, individuals with a doctoral degree and 2 years of laboratory training or experience and 2 years of experience directing or supervising high complexity testing would be qualified to be directors of laboratories performing high complexity testing.

The final rules with comment period published on December 6, 1994 in the **Federal Register** (59 FR 62606), May 12, 1997 in the **Federal Register** (62 FR 25855), October 14, 1998 in the **Federal Register** (63 FR 55031), and December 29, 2000 in the **Federal Register** (65 FR 82941) extended the date by which an individual with a doctoral degree was required to be board certified in order to qualify as a director of a laboratory that performs high complexity testing. These date extensions were established to allow additional time for laboratory directors who were not board certified to complete certification requirements.

Following the publication of the February 28, 1992 rule, many individuals expressed concern about making board certification a mandatory requirement for directors of laboratories performing high complexity testing. In response to the publication of the date extension regulations, we received comments suggesting that we develop alternative provisions to qualify individuals with a doctoral degree on the basis of laboratory training or experience, instead of requiring board certification.

II. Provisions of the Proposed Rule

Upon consideration, we realize that individuals currently serving as laboratory directors are qualified based on training and experience, and have demonstrated the level of competency necessary to direct laboratories performing high complexity testing.

Therefore, we are proposing to revise and expand the qualification requirements at § 493.1443(b)(3). The proposed change provides three alternatives for an individual to meet in order to be qualified to serve as a director of a laboratory performing high complexity testing.

First, an individual who holds an earned doctoral degree and is certified by an HHS-approved board is qualified.

Second, an individual who is or has been the director of a laboratory performing high complexity testing before January 1, 2003, and holds an earned doctoral degree in a chemical, physical, biological, or clinical laboratory science from an accredited institution; and has 2 years of laboratory training or experience, or both; and 2 years experience directing or supervising high complexity testing will be qualified.

Finally, an individual who holds an earned doctoral degree but has never been the director of a laboratory performing high complexity testing must have at least 6 years of laboratory training or experience, or both; including 2 years of experience directing or supervising high complexity testing.

We are particularly interested in receiving comments on the appropriate combination of education and experience needed to ensure competency in directing a laboratory performing high complexity testing in the absence of board certification.

III. Response to Comments

Because of the large number of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble of that document.

IV. Regulatory Impact Statement

Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This rule is not a major rule, and we do not anticipate that these provisions will have an impact of $100 million or more in any 1 year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $10 million or less annually. For purposes of the RFA, all laboratories are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This rule applies only to the qualifications of individuals hired to direct laboratories performing high complexity testing and does not have any direct impact on laboratories. In addition, the rule would allow high complexity laboratory directors who have a doctoral degree and laboratory experience but are not certified by an HHS-approved board two options to maintain their director qualifications. These options would ensure that currently employed laboratory directors including those directors of State public health laboratories would continue their laboratory director services. The essential participation of these public health laboratories in the homeland defense effort would be compromised without the options provided in this rule. In the absence of this proposed change, the experienced individuals who have a doctoral degree without board certification and are serving as directors of laboratories performing high complexity testing would be ineligible to continue serving in their current positions, further exacerbating the existing shortage of qualified personnel in clinical and public health laboratories.

Therefore, we are proposing certifying that this rule will not have significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We do not anticipate these provisions will have an impact of $110 million or more in any 1 year. This proposed rule has no consequential effect on State, local, or tribal governments. Therefore, we have not prepared a regulatory impact analysis.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that this proposed rule would not have a substantial effect on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 493

Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV, part 493 as set forth below:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), and the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), and the sentence following 1395x(s)(11) through 1395x(s)(16)).

2. In § 493.1443, paragraph (b) introductory text is republished, and paragraph (b)(3) is revised to read as follows:

§ 493.1443 Standard; Laboratory director qualifications.

* * * * *

(b) The laboratory director must—

* * * * *

(3) Hold an earned doctoral degree in a chemical, physical, biological, or clinical laboratory science from an accredited institution and—

(i) On or after January 1, 2003, be certified and continue to be certified by a board approved by HHS;

(ii) Before January 1, 2003, must have served or be serving as director of a laboratory performing high complexity testing and must have at least—

(A) Two years of laboratory training or experience, or both; and

(B) Two years of experience directing or supervising high complexity testing; or

(iii) Have at least 6 years of laboratory training or experience, or both; including 2 years experience directing or supervising high complexity testing.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 23, 2001.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention.

Dated: August 30, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 11, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–31722 Filed 12–27–01; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket Nos. 00–256, 96–45; DA 01–2916]

Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Limited Extension of Time for Filing Comments and Replies in Rate-of-Return Access Charge Reform Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: In this document, the Commission extends the time by 45 days for filing comments and reply comments in the Rate-of-Return Access Charge Reform proceeding. Certain members of the Multi-Association Group (MAG) requested an extension of time for filing comments. This proceeding seeks additional comment on proposals for incentive regulation, proposed changes to the ''all-or-nothing'' rule, pricing flexibility for rate-of-return carriers, and merging the Long Term Support mechanism into the new Interstate Common Line Support mechanism.

DATES: Comments are due on or before February 14, 2002, and reply comments are due on or before March 18, 2002.

ADDRESSES: Parties who choose to file comments by paper should send comments to Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., SW; TW-A325, Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*.

FOR FURTHER INFORMATION CONTACT: Marvin F. Sacks at (202) 418–2017 (Common Carrier Bureau).

SUPPLEMENTARY INFORMATION: On November, 8, 2001, the Commission released the Second Report and Order and Further Notice of Proposed Rulemaking (''FNPRM'') in CC Docket Nos. 00–256 and 96–45, FCC 01–304, published at 66 FR 59761, November 30, 2001. Certain members of the Multi-Association Group (MAG) requested an extension of time for filing comments in the FNPRM. This proceeding seeks additional comment on proposals for incentive regulation, proposed changes to the ''all-or-nothing'' rule, pricing flexibility for rate-of-return carriers, and merging the Long Term Support mechanism into the new Interstate Common Line Support mechanism. When filing comments and reply comments, parties should reference CC Docket Nos. 00–256 and 96–45, and conform to the filing procedures contained in this FNPRM. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW, CY–B402, Washington, DC 20554. The FNPRM is also available via the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–01–304A1.pdf*.

Federal Communications Commission.

Jack Zinman,

Deputy Division Chief, Competitive Pricing Division.

[FR Doc. 01–31864 Filed 12–27–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH96

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Northern Great Plains Breeding Population of the Piping Plover; Reopening of Public Comment Period and Notice of Availability of Draft Economic Analysis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposal to designate critical habitat for the northern Great Plains breeding population of the piping plover (*Charadrius melodus*), under the Endangered Species Act of 1973, as amended. We also are providing notice of the reopening of the public comment period for the proposal to designate critical habitat for this species, and the associated draft environmental assessment, to allow all interested parties to comment. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in the final rule. Comments submitted during this comment period also will be incorporated into the public record and will be fully considered in the final rule.

DATES: The comment period is opened and will close on January 28, 2002. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: You may submit written comments and information to Piping Plover Comments, South Dakota Ecological Services Field Office, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501, or by facsimile to 605–224–9974.

You may hand-deliver written comments to our South Dakota Field Office at the address given above.

You may send comments by electronic mail (e-mail) to FW6_PipingPlover@fws.gov. See the Public Comments Solicited section below for file format and other information on electronic filing.

Copies of the draft economic analysis, draft environmental assessment, and proposed rule for designation of critical habitat for the northern Great Plains breeding population of the piping plover are available from the aforementioned address or on the Internet at *http://mountain-prairie.fws.gov/pipingplover.*

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nell McPhillips, Fish and Wildlife Biologist, at the above address or at 605–224–8693, extension 32.

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule to designate critical habitat for the northern Great Plains breeding population of the piping plover in the **Federal Register** (66 FR 31760, June 12, 2001). Section 4(b)(2) of the Endangered Species Act (Act) requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impacts, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

The proposed designation includes 11 areas of prairie alkali wetlands and reservoir lakes in 5 counties in Montana, 18 counties in North Dakota, and 1 county at Lake-of-the-Woods, Minnesota, totaling approximately 196,576.5 acres [79,553.1 hectares]. It also includes five areas of portions of four rivers in the States of Montana, North Dakota, South Dakota, and Nebraska, totaling approximately 1,338 miles [2,152.9 kilometers] of river. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Public Comments Solicited

We will accept written comments and information during this comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES**). If you would like to submit comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your message, contact us directly by calling our South Dakota Field Office at 605–224–8693.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the above address. Copies of the draft Environmental Assessment are available on the Internet at *http://mountain-prairie.fws.gov/pipingplover* or by writing to Pete Gober, Field Supervisor (*see* **ADDRESSES**).

Author

The primary authors of this notice are the South Dakota Field Office staff (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 30, 2001.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 01–31586 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122001A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day Council meeting on January 15 through 17, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday, January 15, 16, and 17, 2002. The meeting will begin at 9 a.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Courtyard by Marriott, 1000 Market Street, Portsmouth, NH 03801; telephone (603) 436–2121. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, January 15, 2002

Following introductions, the Council will receive a briefing on the status of the U.S./Canada shared resources agreement. The Enforcement Committee will discuss its recommendations concerning the Council's Enforcement Policy in view of the 9/11 attacks because of United States Coast Guard (USCG) redirection of USCG resources to national security. The Enforcement Committee may possibly discuss Enforcement Committee progress on reviewing Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 1 to the Monkfish FMP. Later in the morning, there will be a Stock Assessment Public Review Workshop during which an advisory report on the status of monkfish, Georges Bank winter flounder, and Loligo squid developed at the 34th Stock Assessment Workshop will be presented. The Council will then begin consideration of monkfish management issues. It intends to approve final action on Framework Adjustment 1 to the Monkfish FMP.

Options under consideration include, but are not limited to: (1) taking no action and allowing the FMP Year 4 default measures to take effect (and eliminating the directed fishery); (2) postponing the Year 4 default measures for one year and adjusting trip limits and days-at-sea allocations to achieve fishing year 2000 landings levels (after accounting for the court-ordered adjustment to the gillnet trip limits) (the preferred alternative); and (3) adjusting management measures to reduce catches to the Years 2 and 3 total allowable catch (TAC) targets. The Council also will consider scoping comments on

Amendment 2 to the Monkfish FMP. Amendment 2 will consider updated scientific information in revising overfishing definitions, rebuilding targets and management measures, as appropriate to rebuild stocks to maximum sustainable levels by 2009; reduce overall FMP complexity; update environmental impact documents; consider modifications to the limited entry program for vessels fishing south of the North Carolina/Virginia border; and update the Essential Fish Habitat components.

Wednesday, January 16, 2002

The meeting will reconvene with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. A brief period for general comments from the public concerning fisheries management issues will follow. During the Scallop Committee Report the committee will request approval of additional management alternatives to be included in draft Amendment 10 to the Atlantic Sea Scallop FMP and analyzed in the Draft Supplemental Environmental Impact Statement (DSEIS). Primary issues include alternatives to manage effort by vessels with limited access and general category scallop permits, minimize habitat and bycatch impacts, and address monitoring and data collection issues.

Thursday, January 17, 2002

On the final day of the meeting, the Council plans to approve final management measures to be included in the Deep-Sea Red Crab FMP. Measures under consideration include controlled access, days-at-sea and trip limit programs for the directed red crab fishery, and the establishment of a fishing year for management purposes. There will be an update on the initial meeting of the Council's Marine Protected Area Committee followed by a report from the Capacity Committee. The Capacity Committee will discuss and seek Council guidance on capacity reduction proposals to be included in Amendment 13 to the Northeast Multispecies FMP. The Groundfish Committee will provide an update on the development of Amendment 13 as well as Framework 36 to the Northeast Multispecies FMP. Prior to addressing any other outstanding business, the Council will consider the development of an FMP for hagfish and possible approval of a control date to determine future access to the fishery.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery management plan. If the Regional Administrator concurs with the adjustment proposed by the Council, the Regional Administrator may publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 21, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 01–31973 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 249
Friday, December 28, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Special Provisions for Canadian Fresh Fruit and Vegetable Imports Under the North American Free Trade Agreement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination of existence of conditions necessary for imposition of temporary duty on potatoes from Canada.

SUMMARY: As required by section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, as amended by the North American Free Trade Agreement Implementation Act (''FTA Implementation Act''), this is a notification that the Secretary of Agriculture has determined that the necessary conditions exist with respect to United States acreage and import price criteria for potatoes classifiable to subheadings 0701.90 of the Harmonized Tariff Schedule of the United States (HTS) imported from Canada to permit the Secretary to consider recommending to the President the imposition of a temporary duty (''snapback duty'') by the United States pursuant to section 301(a) of the FTA Implementation Act, implementing Article 702 of the United States-Canada Free-Trade Agreement, Special Provisions for Fresh Fruits and Vegetables, as incorporated by reference and made a part of the North American Free Trade Agreement (NAFTA) pursuant to Annex 702.1, paragraph 1 of NAFTA.

FOR FURTHER INFORMATION CONTACT: Brian Grunenfelder, Horticultural & Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1049 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The FTA Implementation Act, in accordance with the NAFTA, authorizes the imposition of a temporary duty (snapback) for a limited group of fresh fruits and vegetables from Canada when certain conditions exist. Potatoes, classified under subheadings 0701.90 of the HTS, is a good subject to the snapback duty provision.

Under section 301(a) of the FTA Implementation Act, two conditions must exist before imposition by the United States of a snapback duty can be considered. First, the import price of a covered Canadian fruit or vegetable, for each of five consecutive working days, must be less than ninety percent of the corresponding five-year average monthly import price. This price for a particular day is the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, in each of the 5 preceding years, excluding the years with the highest and lowest monthly averages.

Second, the planted acreage in the United States for the like fruit or vegetable must be no higher than the average planted acreage over the preceding five years, excluding the years with the highest and lowest acreage.

From October 2–8, 2001, the price conditions with respect to potatoes were met.

The most recent revision of planted acreage for potatoes shows that this year's planted acreage is below the planted acreage over the preceding five years, excluding the years with the highest and lowest planted acreages.

Issued at Washington, DC the 12th day of December, 2001.

Ann Veneman,

Secretary of Agriculture.

[FR Doc. 01–31949 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST–01–05]

Microbiological Data Program; Public Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a public meeting to provide a forum to discuss the Microbiological Data Program (MDP). Specifically, AMS will present a detailed data collection proposal and seek input from all interested parties on data collection techniques. This notice also sets forth the schedule and proposed agenda for the meeting.

DATES: The public meeting will be held on Thursday, January 10, 2002, from 8:30 a.m. to 1 p.m.

ADDRESSES: The public meeting will be held at the Jamie L. Whitten Federal Building, Room 107–A, United States Department of Agriculture, 12th and Jefferson Drive, SW, Washington DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. Epstein, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture, 14th and Independence Avenue, Washington DC, 20250 Telephone number (202) 720–5231 or fax (202) 720–6496.

SUPPLEMENTARY INFORMATION: In the past several years the number of foodborne illness associated with domestic and imported fresh fruits and vegetables has increased. Some microorganisms once thought under control may be adapting to their environments, may be developing resistance to conventional food processing operations, and may be re-emerging with increased pathogenicity. To respond to these concerns, Congress authorized an appropriation of $6.235 million for fiscal year (FY) 2001 and $6.234 million for FY 2002, to fund a microbiological monitoring program for foodborne pathogens and indicator organisms on domestic and imported fruits and vegetables. The program is designed to collect reliable data and develop national estimates of bacterial contamination with regard to selected produce. The MDP is a voluntary data gathering program and not a regulatory or enforcement program. The Federal Food and Drug Administration, Centers of Disease Control and Prevention, USDA's National Agricultural Statistical Service, as well as 10 State Departments of Agriculture, industry and academia have provided assistance and information in formulating program policy and operating procedures. The program will be conducted under the authority of the Agricultural Marketing

Act of 1946 (7 U.S.C. 1621–1627). Congress requested that AMS hold a public meeting to seek input from all interested parties (H.R. No. 275, 107th Congress, 1st session, at 65). Therefore, AMS, is giving notice of a public meeting to allow anyone, especially those who are interested in food safety issues, an opportunity to present their input regarding MDP. This public meeting is scheduled for Thursday, January 10, 2002. The public meeting will begin at 8:30 a.m. and is scheduled to end at 1 p.m. It will be held at the Jamie L. Whitten Federal Building, Room 107–A, United States Department of Agriculture, 12th and Jefferson Drive, SW, Washington DC 20250.

Those parties who wish to speak at the meeting should register on or before January 7, 2002. To register to speak, please e-mail *Robert.Epstein@USDA.gov,* or send a fax to Dr. Robert Epstein at (202) 720–6496. Registrants should include their name, address, and daytime telephone number. Depending on the number of registered speakers, time limits may be imposed on speakers, and speakers who have registered in advance will be given priority if time is limited.

The proposed agenda for the meeting will include discussions of: (1) MDP Overview and Framework, (2) MDP sampling rationale and principles, (3) Public health agencies program needs, and (4) Public recommendations and concerns.

Upon entering the Jamie L. Whitten Federal Building, visitors should inform security personnel that they are attending the MDP Public Meeting. Identification will be required to be admitted to the building. Security personnel will direct visitors to the registration tables located outside of Room 107–A. Registration upon arrival is necessary for all participants, including those who have registered to speak in advance.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

Dated: December 21, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–31967 Filed 12–21–01; 2:27 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–119–1]

Availability of an Environmental Assessment for Field Testing Avian Encephalomyelitis-Fowl Pox-Mycoplasma Gallisepticum Vaccine, Live Virus, Fowl Pox Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are informing the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed avian encephalomyelitis-fowl pox-mycoplasma gallisepticum vaccine for use in poultry. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a veterinary biological product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensure.

DATES: We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by January 28, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–119–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–119–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–119–1'' on the subject line.

Copies of the environmental assessment may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number, date, and complete title of this notice when requesting copies. A copy of the environmental assessment (as well as the risk analysis with confidential business information removed) and any comments that we receive on this docket are available for public inspection in our reading room. The reading room is located in room 1141 of the South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; telephone (301) 734–8245, fax (301) 734–4314.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the

safety of animals, public health, and the environment.

Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the veterinary biological product:

Requester: Biomune Company.

Product: Avian Encephalomyelitis-Fowl Pox-Mycoplasma Gallisepticum Vaccine, Live Virus, Fowl Pox Vector.

Field test locations: Iowa, Minnesota, Nebraska, North Carolina, Pennsylvania, Texas, and Virginia.

The above-mentioned product is a modified live avian encephalomyelitis vaccine in combination with a live, attenuated fowl pox virus that has been genetically modified to express *Mycoplasma gallisepticum* antigens. The vaccine is for use in chickens as an aid in the prevention of avian encephalomyelitis, fowl pox, and *Mycoplasma gallisepticum.*

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test, provided no adverse impacts on the human environment are identified and the product meets all other requirements for licensure.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 20th day of December 2001.

W. Ron Dehaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–31946 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–042N]

Codex Alimentarius: 10th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meetings, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and the U.S. Department of Health and Human Services (HHS), are sponsoring two public meetings, on January 8 and February 7, 2002, to provide information and receive public comments on agenda items that will be discussed at the Tenth Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS), which will be held in Brisbane, Australia, February 25 to March 1, 2002. The Under Secretary and FDA recognize the importance of CCFICS, and the need to provide interested parties the opportunity to obtain background information and comment on the Tenth Session.

DATES: The public meetings are scheduled for Tuesday, January 8, 2002 from 1:00 p.m. to 4:00 p.m., and Thursday, February 7, 2002 from 1:00 p.m. to 3:00 p.m.

ADDRESSES: The public meetings will be held in Conference Room 1409, Federal Office Building 8, Food and Drug Administration, 200 C Street, SW., Washington, DC. Submit one original and two copies of written comments to the FSIS Docket Room, Docket #01–042N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. To receive copies of the documents referenced in this notice, contact the FSIS Docket Room at the above address. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/ccfics10/fc02 01e.htm*

All comments received in response to this notice will be considered part of the public record to this notice will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, telephone (202) 205–7760; Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Patrick J. Clerkin at the above phone number.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in Food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

CCFICS was established to develop principles and guidelines for: food import and export inspection and certification systems; the application of measures by competent authorities of importing and exporting countries to provide assurance that foods comply with essential requirements; the utilization of quality assurance systems; and the format and content of official certificates.

Issues To Be Discussed at the Public Meeting

The following issues and referenced documents will be discussed during the public meetings:

1. Adoption of the Agenda, DOCUMENT CX/FICS 02/1

2. Matters Referred from the Codex Alimentarius Commission and Other Codex Committees, DOCUMENT CX/FICS 02/2

3. Draft Guidelines for Food Import Control Systems—Comments at Step 6, DOCUMENT CL 2001/25–FICS; DOCUMENT *ALINORM 01/30A, Appendix IV;* DOCUMENT CX/FICS 02/3

4. Draft Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems—Comments at Step 6, DOCUMENT CL 2001/25–FICS; DOCUMENT *ALINORM 01/30A, Appendix III;* DOCUMENT CX/FICS 02/4

5. Proposed Draft Guidelines on the Judgement of Equivalence of Technical Regulations Associated with Food Inspection and Certification Systems—Comments at Step 3, DOCUMENT *CX/FICS 02/5;* DOCUMENT CX/FICS 02/5–Add.1

6. Proposed Draft Guidelines for the Utilization and Promotion of Quality Assurance Systems to Meet Requirements in Relation to Food—Comments at Step 3, DOCUMENT *CX/FICS 02/6;* DOCUMENT CX/FICS 02/6–Add.1

7. Proposed Draft Revision to the Codex Guidelines for the Exchange of Information in Food Control Emergency Situations—Comments at Step 3, DOCUMENT CX/FICS 02/7; DOCUMENT CX/FICS 02/7–Add.1

8. Other Business and Future Work. In advance of the meetings, the U.S. Delegate to CCFICS will have assigned responsibility for development of U.S. positions on these issues to members of the U.S. government. The individuals assigned responsibility will be named at the meetings and will take comments and develop draft U.S. positions. All interested parties are invited to provide information and comments on the above issues, or on any other issues that may be brought before CCFICS.

Public Meetings

At the January 8th public meeting, the issues will be reviewed and comments will be received. At the February 7th public meeting, the draft United States' positions on the issues will be described and discussed, and attendees will have the opportunity to pose questions and offer comments.

Please state that your comments relate to CCFICS activities and specify which issues your comments address.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of the **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meeting, recalls, and any other types of information that could effect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office at (202) 720–5704.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 01–31947 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection in support of the Public Law 480, Title I program.

DATES: Comments on this notice must be received by February 26, 2002 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: William Hawkins, Director, Program Administration Division, Foreign Agricultural Service, Room 4077 South Building, Stop 1031, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250–1031, telephone (202) 720–3241.

SUPPLEMENTARY INFORMATION:

Title: Request for Vessel Approval, Form CCC–105; and Request for Vessel Approval Form CCC–105 (cotton).

OMB Number: 0551–0008.

Expiration Date of Approval: April 30, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional terms. 7 U.S.C. 1701 et seq. Shipping agents or embassies submit pertinent shipping information on Form CCC–105 to facilitate approval by CCC of shipping arrangements. This approval is necessary to assure compliance with cargo preference requirements at the lowest cost to CCC. Agents submit this document in order that USDA can generate the CCC–106, a necessary payment document. Ocean carriers then receive payment for ocean freight.

Estimate of Burden: The public reporting burden is 15 minutes per response for suppliers of ocean transportation reporting details of freight transactions.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Total Annual Burden of Respondents: 9 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Requests for comments: Comments are requested on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. comments may be sent to William Hawkins, Director, Program Administration Division, Foreign Agricultural Service Room 4077 South Building, Stop 1031, U.S. department of agriculture, 1400 Independence Ave., SW., Washington, DC 20250–1031, telephone (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All

comments will become a matter of public record.

Frank Lee,

Acting General Sales Manager, Foreign Agricultural Service and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 01–31948 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Star Fire Restoration; Eldorado National Forest, Placer County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Star Fire burned 16,800 acres in August and September, 2001, on the Tahoe and Eldorado National Forests. Of the total fire, approximately 2,416 acres burned on the Georgetown Ranger District of the Eldorado National Forest. The USDA, Forest Service, Eldorado National Forest will prepare an environmental impact statement (EIS) on a proposal to treat approximately 1650 acres of fire killed and damaged trees in the Star Fire burned area. The fire area is identified in the Sierra Nevada Forest Plan Amendment as old forest emphasis and general forest. The purpose of the project is to enhance the development of old forest conditions over the long term by reducing fuel accumulation and fire hazard, increasing the ability to suppress future wildfire, increasing ground cover to protect soil productivity and improve watershed condition, and recovering the value of wood products to fund reforestation and restoration. The proposed action is also designed to contribute to snag and log needs of wildlife, improve aquatic habitats and stream channel function, and provide for public and forest worker safety. It is believed that watershed condition and the probability of growing old forest conditions over the long term will be improved by this project.

DATES: Comments concerning the scope and implementation of this proposal should be received by January 4, 2002.

ADDRESSES: Send written comments to Patricia Ferrell, Project Leader, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Patricia Ferrell, at the above address, or call her at 530–642–5146.

SUPPLEMENTARY INFORMATION: The fire caused extensive tree mortality. Field examination indicates that 71% of the project area currently exhibits >75% stand mortality by basal area, 2% of the project area is unburned, 20% of the project area is non forest (rock and barren areas) and plantations, and 7% of the project area currently exhibits 75% mortality by basal area. Additional mortality is likely to become evident next spring and summer as more crowns begin to brown and bark beetles become established. As a result of the fire, much of the project area has reverted from mid to late seral forest conditions to early seral forest. Establishment of old forest requires survival and growth of individual trees and forested stands over the next 250+ years without the occurrence of another stand replacing fire. Preventing another stand replacing fire involves a combination of recurring fuel treatments to modify fire behavior, and effective suppression. Removal of dead trees will reduce future fuel accumulation, improve the ability to effectively suppress future wildfires, and increase the ability to maintain low fuel conditions through prescribed fire. The process of removing dead trees would maintain soil productivity for tree growth by immediately increasing effective ground cover (limbs, twigs, and small boles) to reduce soil erosion. The proposed action would remove dead trees using ground based, skyline, and helicopter logging methods. Trees posing a safety hazard to the public and forest workers would be removed along maintenance level 1, 2, 3, 4, and 5 roads. Roads would be reconstructed to facilitate tree removal and improve watershed condition. Slash and small dead trees would be treated to provide ground cover and reduce long term fuel loading. Protection would be applied to sensitive plants, wildlife species, and cultural resources.

The proposed action is consistent with the 1989 Eldorado National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (2001).

The decision to be made is whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to remove fire killed and damaged trees in the project area.

Other alternatives will be developed based on significant issues identified during the scoping process for the environmental impact statement. All alternatives will need to respond to the specific condition of providing benefits equal to or better than the current condition. Alternatives being considered at this time include: (1) No Action and (2) the Proposed Action.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from the Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. To facilitate public participation information about the proposed action is being mailed to all who have expressed interest in the proposed action based on publication in the Eldorado National Forest Schedule of Proposed Action and notification of the public scoping period will be published in the Mountain Democrat, Placerville, CA.

Comments submitted during the scoping process should be in writing and should be specific to the proposed action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal. The scoping process includes:

(a) Identifying potential issues;

(b) Identifying issues to be analyzed in depth.

(c) Eliminating nonsignificant issues or those previously covered by a relevant previous environmental analysis;

(d) Exploring additional alternatives;

(e) Identifying potential environmental effects of the proposed action and alternatives.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 2002. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Eldorado National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,*

803f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is scheduled to be completed in March 2002. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal.

John Berry, Forest Supervisor, Eldorado National Forest is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR Part 215).

Dated: December 19, 2001.

Susan A. Rodman,

Acting Forest Supervisor.

[FR Doc. 01–31906 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Interior Wetlands Environmental Impact Statement; Hiawatha National Forest, Chippewa County, MI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of proposed land management activities, and corresponding alternatives, within the Interior Wetlands project area. The project is located on the Sault Ste. Marie Ranger District, Hiawatha National Forest, Chippewa County, Michigan, approximately 35 miles southwest of Sault Ste. Marie, Michigan. The project area is approximately 30,600 acres and management activities are being proposed on less than 15 percent of the area.

Jack pine stands experience a cyclical outbreak of jack pine budworm. Older trees are more susceptible to defoliation which can lead to mortality and dead tops. In the Interior Wetlands project area much of the jack pine is more than 60 years old. The jack pine in the project area experienced budworm defoliation during the 1991/1992 outbreak and is showing some defoliation during the outbreak that began in 2001. The Forest Service is evaluating the options available to develop a more evenly distributed age-class and to improve the vigor of jack pine stands in order to minimize the impacts of budworm defoliation. In addition to proposing jack pine salvage and regeneration in Interior Wetlands, the Forest Service evaluated some other management opportunities within the entire project area to implement the Hiawatha National Forest Land and Resource Management Plan (Forest Plan, 1986). The proposed action includes salvage and regeneration of jack pine, timber harvesting and regeneration of other species, changes to the transportation system, changes to the old growth system, timber stand improvement projects, and wildlife and fisheries habitat improvement projects.

Overall guidance of land management activities on the Hiawatha National Forest is provided by the Forest Plan. In order to meet the objectives and desired future conditions set forth in the Forest Plan, the following purpose and need has been identified for the Interior Wetlands project area: (1) Reduce the impacts of the jack pine budworm by creating a more evenly distributed age-class structure (which also improves habitat for sandhill crane, merlin, northern harrier, and other species), improving vigor, and increasing growth rates in jack pine stands. (2) Regenerate older aspen and mixed balsam fir/aspen/paper birch stands to maintain these forest types; provide habitat for white-tailed deer, ruffed grouse, snowshoe hare, and other species; improve vigor, and increase growth rates. (3) Regenerate older black spruce stands to improve vigor and to increase growth rates. (4) Remove some trees in some jack pine, aspen, balsam fir/aspen/paper birch, northern hardwoods, paper birch, black spruce, red pine, white pine, and cedar to either concentrate growth on the remaining trees or to provide space for new trees to become established. (5) Provide useable wood products to local markets and improve timber age-class distribution, vigor, and growth rates on merchantable stems to ensure a more even flow of wood products in the future. (6) Prepare areas where jack pine and black spruce are being regenerated by reducing the slash and exposing mineral soil for a seedbed. (7) Manage an efficient transportation system through construction, reconstruction, maintenance, and decommissioning of roads. (8) Improve the quality and survival of some white pine stems damaged by white pine weevil and blister rust. (9) Evaluate stands currently in the old growth system and other stands to determine if there is a different arrangement of stands that could provide better existing old growth characteristics and better placement across the landscape. (10) Adjust wildlife opening system by creating openings or maintaining existing openings by removing woody encroachment to provide habitat for sandhill crane, black bear, ruffed grouse, and other species. (11) Improve fish habitat (primarily brook trout) by adding log bank cover and placing spawning gravel. (12) Design projects and/or develop mitigation measures, as appropriate, to minimize impacts to the resources to acceptable levels defined by laws, regulations, or policies.

A roads analysis for the project area will be conducted in conjunction with the EIS. The roads analysis is not a decision document but is necessary to make an informed decision. At a minimum, the roads analysis will identify: needed and unneeded roads; road associated environmental and public safety risks; site-specific priorities and opportunities for road improvements and decommissioning; areas of special sensitivity, unique resource values, or both; and any other information that may be needed to support project-level decisions. Adjacent landowners, citizens groups, State, local, and Tribal governments, and other Federal agencies are invited to comment on the transportation system.

The Draft Environmental Impact Statement (DEIS) will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on National Forest system lands will be considered. The DEIS will disclose the analysis of site-specific mitigation measures and their effectiveness. The DEIS is expected

to be filed with the EPA and available for public review by November 2002.

DATES: Comments concerning the proposed action and scope of the analysis should be received by January 28, 2002 to receive timely consideration in the DEIS. A public meeting about this project will be held on December 4, 2001 at 6:30 pm.

ADDRESSES: Mail written comments to Stevan J. Christiansen, District Ranger, St. Ignace and Sault Ste. Marie Ranger Districts, 1798 West US–2, St. Ignace, MI 49781. The public meeting for this project will be held at the Trout Lake Town Hall on the main street of Trout Lake (M–123).

FOR FURTHER INFORMATION CONTACT: Martha Sjogren, Team Leader, St. Ignace Ranger District. Phone: (906) 643–7900 ext. 133. Email: msjogren@fs.fed.us.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed land management activities. The information in this notice is summarized. Contact the person identified in the For Further Information Contact section to obtain additional information about desired future condition, purpose and need, proposed action, design criteria and/or mitigation measures, and maps. The information packet and color maps are also available at: *http://www.fs.fed.us/r9/hiawatha.*

The project area is approximately 30,600 acres and is located near the town of Trout Lake, Chippewa County, Michigan. Proposed activities within the project area include portions of the following areas: T44N, R4W, Sections 19, 31; T44N, R5W, Sections 2–11, 13–27, 35, 36; T44N, R6W, Sections 1–18, 21–24; T45N, R5W, Sections 8–10, 15–17, 19–22, 27–33; T45N, R6W, Sections 23, 25, 26, 31, 32, 34–36.

To meet the purpose and need, this project proposes:

1. To salvage (through clearcut harvest) and regenerate approximately 2,216 acres of mature and overmature jack pine.

2. To harvest (clearcut) and regenerate approximately 289 acres of mature and overmature aspen, balsam fir/aspen/paper birch, and black spruce stands.

3. To harvest (clearcut) and regenerate approximately 119 acres of mature black spruce stands.

4. To harvest some trees (partial removal cuts) on approximately 508 acres in jack pine, aspen, balsam fir/aspen/paper birch, northern hardwoods, black spruce, red pine, white pine, and cedar.

5. To harvest (commercially thin) about 148 acres in northern hardwoods and paper birch.

6. Prepare sites for jack pine regeneration by rollerchopping about 1,400 acres and prescribed burning about 400 acres.

7. To adjust the transportation system by: constructing approximately 1.7 miles of classified roads, 1.5 miles of temporary roads on existing unclassified road corridors and then decommission, and 23.1 miles of temporary roads; changing the classification of approximately 2.8 miles from unclassified to classified; performing road maintenance on approximately 7.8 miles of classified roads, and 2.8 miles unclassified roads changed to classified roads; reconstructing approximately 0.1 mile of classified road; and decommissioning approximately 0.3 miles of classified roads and approximately 3.2 miles of unclassified roads.

8. To prune approximately 40 acres of weevil and blister rust damaged white pine saplings.

9. To adjust the old growth system by removing from the existing system about 348 acres with limited existing old growth conditions or in unfavorable locations and adding to the system about 223 acres with some existing old growth conditions or in more favorable locations.

10. To create wildlife openings on about 9 acres and maintain openings on about 157 acres by removing woody encroachment.

11. To improve fish habitat in Biscuit Creek by adding log bank cover along approximately 750 feet and placing 75 square yards of spawning gravel in the stream.

12. To develop design criteria and/or mitigation measures to reduce the impacts of management activities on resources. Specifically, design projects and/or mitigation measures to control road use; protect threatened, endangered and sensitive species; protect plant habitat; protect wildlife and protect and/or improve scenic integrity; protect heritage resources; provide safe snowmobiling in area of timber harvest; provide good seed source jack pine cones; and protect soil and hydrology.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes in response to the issues identified during public involvement.

Preliminary Issues

The public has had several previous opportunities to comment on these proposed actions. The original Interior Wetlands EA (circa 1997) was included in the NEPA quarterly, scoping letters were sent out, and public meetings were held. The public commented again during the 30-day public comment period (April 1999), and when the EA was appealed. In September 2000, the Forest Service released the Revised Interior Wetlands Project Set EA for another 30-day public comment period. From the public comments received from 1997–2000, preliminary issues that may be addressed in this EIS are as follows:

1. There is too much timber harvest proposed in the area, there is too much clearcutting proposed, and other resources (e.g. wildlife, wetlands, soils, and hydrology) would be negatively impacted.

2. There is too much road construction to accommodate the timber harvest, there are too many temporary roads proposed, and other resources (e.g. wildlife, wetlands, soils, and hydrology) would be negatively impacted by the construction and by ineffective closure and obliteration of temporary roads.

3. There is too much focus on providing timber products and not enough focus on restoring the ecosystem to more natural conditions.

Decisions To Be Made

The St. Ignace and Sault Ste. Marie District Ranger will decide the following:

1. Whether or not to salvage and harvest timber and if so, the selection and site-specific location of appropriate timber management practices (silvicultural prescription, logging system, fuels treatment, and reforestation); road construction/reconstruction/maintenance/decommissioning necessary to provide access and protect resources; and appropriate mitigation measures.

2. Whether or not to make adjustments to the old growth system.

3. Whether or not to maintain existing wildlife openings and create new ones.

4. Whether or not to modify fish habitat by adding log bank cover and placing spawning gravel.

5. What, if any, specific project monitoring requirements would be needed to ensure mitigation measures are implemented and effective.

Public Involvement and Scoping

The public is encouraged to attend the public meeting at 6:30 p.m. on December 4, 2001 at the Trout Lake Town Hall. Forest Service officials will be available at that time to present an overview of the purpose and need and

proposed action. It is also an opportunity for the public to comment on the project.

Public participation is an important part of the analysis. The public may visit Forest Service officials at any time during the analysis and prior to the decision. Public scoping has been ongoing for the Interior Wetlands project. The Forest Service will be seeking additional information, comments, and assistance from Federal, State, and local agencies, as well as local Native American tribes and other individuals or organizations that may be interested in or affected by the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will:

Identify potential issues.

Identify issues to be analyzed in depth.

Identify alternatives to the proposed action.

Explore additional alternatives that will be derived from issues recognized during scoping.

Identify potential environmental effects of this project and alternatives (e.g. direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 2002. At that time EPA will publish a Notice of Availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by February 2003. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the DEIS and to applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The District Ranger of the St. Ignace and Sault Ste. Marie Ranger Districts, Hiawatha National Forest, 1798 West US–2, St. Ignace, MI 49781, is the Responsible Official. As the Responsible Official, he will decide if the proposed project will be implemented. He will document the decision and reasons for the decision in the Record of Decision.

Authority: National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321–4346); Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR Part 1b).

Dated: November 7, 2001.

Clyde Thompson,

Forest Supervisor, Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI 49829.

[FR Doc. 01–31894 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

Blue Fire Forest Recovery Project, Lassen and Modoc Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, Modoc National Forest, Warner Mountain Ranger District (Forest Service) will prepare an environmental impact statement (EIS) to disclose the environmental consequences of the proposed Blue Fire Forest Recovery Project, and alternatives to the proposal. The decision to be made, is to select this proposed action or one of the alternatives to this proposal. The alternatives to this proposal will include a no-action alternative.

The Blue Fire Forest Recovery Project area is located approximately 20 miles southeast of Alturas CA and 9 miles east of Likely, CA, within Lassen and Modoc Counties, CA. The total project area is approximately 33,500 acres, all of which are National Forest System lands.

The Forest Service proposes to move wildland resource conditions within the Blue Fire (August 2001) towards the desired conditions described by the Modoc National Forest Land and Resource Management Plan (MLRMP), as amended by the Sierra Nevada Forest Plan Amendment Record of Decision—Jan 2001 (SNROD), and to implement Standards and Guidelines described by MLRMP as amended by SNROD. Within the Blue Fire, but outside the South Warner Wilderness (SWW), and outside of Inventoried Roadless Areas (IRAs), the Forest Service proposes to take actions. The areas where actions are proposed are identified as Old Forest Emphasis Area and General Forest, in the SNROD. Actions proposed within the Old Forest Emphasis Area are designed to benefit landscape conditions for old forest structure and function. Where the Blue Fire has killed at least 75% of the trees in a timber stand, the Forest Service is proposing to provide long-term watershed protection by reestablishing timber stands with appropriate mixes of native tree species and by reducing the threat of catastrophic wildfire losses in these plantations. The Forest Service proposes to remove heavy fuels created by the Blue Fire through implementation of salvage timber sales. Salvage timber sales are the proposed method of fuels removal because now, and for a short time into the future, these heavy fuels have a commercial value that will support the costs of their removal and contribute to subsequent reforestation and environmental restoration work. If these trees are not harvested, they will deteriorate over time, fall down and result in fuel loadings that will not meet Standards and Guidelines of the MLRMP or SNROD. In these timber stands where salvage harvest is proposed, planting and subsequent activities crucial to plantation survival are proposed. Other activities are proposed to meet the direction of MLRMP and SNROD.

Following is a brief summary of activities proposed: (*1*) No salvage harvest will occur in the South Warner

Wilderness nor any of the three Inventoried Roadless Areas; (*2*) no salvage harvest will occur in any timber stands with less than 75% of the trees killed by the Blue Fire, this includes one Great Gray Owl Protected Activity Center (PAC), one complete goshawk PAC and about ½ of another goshawk PAC; (*3*) where salvage harvest occurs, no live trees will be cut; consistent with SNROD, 30 of the largest dead trees per 10 acres will be retained in all treatment areas; consistent with SNROD, 5 logs (min. 20″ dia. and 10 ft.) will be left for woody debris; protection for Riparian Conservation Areas (RCAs) will be consistent with SNROD; all dead trees 8'' DBH and larger and excess to snag and down log needs will be removed by salvage harvest; all dead trees between 6'' and 8'' DBH will be removed by subsequent service contracts; ground-based harvest systems with designated skid trails will be used on approximately 9,500 acres and helicopter harvest will occur on approximately 600 acres, whole tree removal (including tops) to landing is required; (*4*) salvage of 2 RCAs is included in the description of activity 3, except that in RCAs the maximum size harvest tree is 24'' DBH and both RCAs will be helicopter harvested; (*5*) salvage of the Bald Eagle Management Area is included in the description of activity 3, except that all dead trees within 200 feet of the shoreline of Blue Lake will remain uncut; (*6*) removal and/or rearrangement of dead trees between 1'' and 5'' DBH within harvest stands is proposed on 292 acres of Urban Wildland Intermix Zones and 250 acres of Strategically Placed Area Treatments; (*7*) Reforest 10,100 acres of harvest units and approximately 200 acres of existing plantations killed by the Blue Fire, by hand planting appropriate mixes of species, periodically removing brush from around planted trees by hand grubbing, controlling gopher populations by underground baiting with strychnine treated pellets as needed to ensure plantation survival and installing biodegradable plastic tubing on tree seedlings to prevent above ground animal damage as needed to ensure plantation survival, wider planting spacing in fuel treatments described in activity 6 will be maintained over time; (*8*) Road activities include: 5 miles of aggregate resurfacing; opening and reusing 28 miles of existing temporary roads, constructing and using 4.4 miles of new temporary roads; and closure of 32.4 miles of temporary roads by pulling culverts, outsloping and water-barring, and in some site-specific cases, seeding, tilling or re-contouring; application of magnesium chloride on system roads to alleviate dusting; and closure of some system roads temporarily during harvest for public safety; (*9*) logs will be placed in designated portions of East Creek to create desired pool/riffle ratios; (*10*) One road (0.4 miles) immediately adjacent to Harvey Creek RCA will be decommissioned; (*11*) As needed, some areas of disturbed soils may be seeded with native grass and shrub species to minimize invasion by noxious weeds, and (*12*) Small Business Administration (SBA) set-aside is currently estimated at 68% of timber sale volume, with SBA sales ranging from 5–10 million board feet (MMBF).

DATES: Comments identifying issues concerning the effects of the proposal should be postmarked on or before January 28, 2002 to receive timely consideration in the draft EIS.

ADDRESSES: Submit written comments to: Douglas Schultz, Team Leader, USDA Forest Service, P.O. Box 220, Cedarville, CA 96104. Send electronic comments to: *dschultz@fs.fed.us.* Please reference the Blue Fire Forest Recovery Project on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you. Comments received, including names and addresses of those who comment, will become part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality.

FOR FURTHER INFORMATION CONTACT: Douglas Schultz, Team Leader, at 530–279–6116 or Edith Asrow, District Ranger, Warner Mountain Ranger District, at 530–279–6116.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed land management activities. The information presented in this notice is summarized. Those who wish to provide comments, or are otherwise interested in the project, are encouraged to obtain additional information from the contact identified in the **FOR FURTHER INFORMATION CONTACT** section.

Preliminary Issues

Two preliminary issues have been identified:

1. Fuel Treatment—The Forest Service will complete an analysis which will assess the benefits, problems and risks of fuel treatments. That analysis will consider: appropriate fuel levels (tons/ac) to retain on the land; size classes of fuels to remove to attain that level; and most appropriate methods of removing that fuel, including salvage logging and service contracts.

2. Environmental Restoration—The Forest Service will complete an analysis that will assess the benefits, problems and risks of actions which will restore or protect desired environmental conditions, including reforestation and associated activities, decommissioning of 0.4 miles of existing road adjacent to Harvey Creek, depositing woody debris in East Creek to improve pool/riffle ratio, and maintaining wider tree spacing in Urban Intermix and Strategically Placed fuel treatments.

Public Involvement

Additional information concerning the proposal can be accessed on the internet at www.r5.fs.fed.us/modoc/management/nepa/nepa.html.

Process Procedures and Timelines

On October 26, 2001, the Modoc National Forest began a Scoping Period for a proposed Action for the Blue Fire Forest Recovery Project Environmental Assessment. A Legal Notice of the proposed action was published in the Modoc County Record on October 25, 2001, and a Scoping Summary description was mailed to approximately 220 persons or groups. The Scoping Period for this proposed action closed November 26, 2001. Comments were received from 32 commenters.

Since the close of the original scoping period, the Forest Service decided to prepare an Environmental Impact Statement. The original proposed action was slightly modified, and is described above. All comments received from the earlier scoping period will be considered in the EIS, unless respondent submits new comments indicating changes to prior submissions.

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review by May 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the

reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519 553 [1978]). Also, environmental objection that could be raised at the draft environmental impact statement state but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]).

Because of the above rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. After the comment period ends on the draft EIS, the comments received will be analyzed and considered by the Forest Service in preparing the final EIS.

The final EIS is scheduled to be completed in September, 2002. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215.

The responsible official is Dan Chisholm, Forest Supervisor, Modoc National Forest, 800 W. 12th St., Alturas CA, 96101.

Dated: December 19, 2001.

Dan Chisholm,

Forest Supervisor.

[FR Doc. 01–31910 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee (PAC) will meet on January 16, 2002 at the Crook County Library, Broughton Room, 200 E. 2nd Street in Prineville, Oregon. A business meeting will begin at 9:00 am and finish at 3:00 pm. Agenda items will include a discussion on the management implications of the Eastside Screens, Litigation Update, ICBEMP update, PAC Recommendations Regarding The Northwest Forest Plan Successes/ Failures, Info Sharing and a Public Forum from 2:30 pm till 3:00 pm. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd., Bend, OR 97701, Phone (541) 416–6872.

Leslie A.C. Weldon,

Forest Supervisor.

[FR Doc. 01–31909 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Counties Payments Committee has scheduled a business meeting on January 19–20, 2002, to discuss how it will provide Congress with the information specified in Section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. The meeting will be held from 8:30 a.m. until 5:00 p.m., and is open to the public.

DATES: The meeting will be held on January 19–20, 2002.

ADDRESSES: The meeting will be held at the Pontchartrain Hotel, 2031 Saint Charles Avenue, New Orleans, Louisiana 70140.

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574; or via e-mail at *rphillips01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Pub L. 106–291) created the Forest Counties Payments Committee to make recommendations to Congress on a long-term solution for making Federal payments to eligible States and counties in which Federal lands are situated. The Committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands which are Federal responsibilities; and monitor payments and implementation of Pub. L. 106–393, The Secure Rural Schools and Community Self-Determination Act of 2000.

Dated: December 19, 2001.

Elizabeth Estill,

Deputy Chief, Programs and Legislation.

[FR Doc. 01–31873 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Ravalli County Resource Advisory Committee, Hamilton, MT. Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Bitterroot National Forest's Ravalli County Resource Advisory Committee will meet Tuesday, January 22, 2001 in Hamilton Montana for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting in January 22 begins at 6:30 p.m., at the Holiday Inn, 138 Bitterroot Plaza Drive, Hamilton, Montana. Agenda topics will include FACA overview, Charter overview, Process of project identification/ recommendation, election of Chairperson, operating guidelines, and establishment of future meeting schedule.

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: December 19, 2001.

Rodd Richardson,

Forest Supervisor.

[FR Doc. 01–31908 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Requested Withdrawal From Mineral Location and Mineral Entry, Public Meeting and Extended Comment Period

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting; request for comment.

SUMMARY: The Forest Service has submitted a request to the Bureau of Land Management to withdraw lands under the general mining laws as authorized by the Federal Land Policy and Management Act of 1976. The Forest Service has scheduled a meeting to accept public testimony and identify issues regarding this requested withdrawal from mineral location and mineral entry on lands in the San Bernardino National Forest. Written comments are invited, and the comment period has been extended.

DATES: The meeting will be held on February 20, 2002, from 6 p.m. to 9 p.m. Written comments must be received no later than February 28, 2002.

ADDRESSES: The meeting will take place at the San Bernardino Hilton, 285 East Hospitality Lane, San Bernardino, California 92408. Written comments on this proposal may be sent to Brent Handley, USDA Forest Service, Pacific Southwest Region, Director, Lands and Minerals Management, 1323 Club Drive, Vallejo, California 94592–1110; or electronically to seliason@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Scott Eliason, San Bernardino National Forest, 909–866–3437, extension 3904, seliason@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published a notice of this Forest Service requested withdrawal in the **Federal Register** on October 29, 2001 (FR Vol. 66, No. 209, 54536). In this Forest Service notice, we announce the details of the public meeting and extend the comment period.

Overview

Approximately 44,575 acres on the San Bernardino National Forest are requested to be withdrawn, subject to valid existing rights, from mineral location and mineral entry under the general mining laws of the United States. The authority to make such a withdrawal is delegated to the Secretary of the Interior under the Federal Land Policy and Management Act of 1976, and other statutes. The process by which such withdrawals are made, and the provisions for other agencies (including the Forest Service) to request such withdrawals from the Secretary of the Interior, are provided under 43 CFR 2300.

Purpose

The purpose of the requested withdrawal is to conserve the habitat of species listed under the federal Endangered Species Act, as directed under section 7(a) of this act. The issues raised during the public meeting, and also from written comments, will be used by the Forest Service and the Bureau of Land Management in finalizing the configuration and extent of the final withdrawal request to be forwarded to the Secretary of the Interior. The issues raised will also be used by the Forest Service to analyze and document the effects and impacts of the action, as required under the National Environmental Policy Act.

Agenda

The meeting will begin with a welcome by Forest Supervisor Gene Zimmerman, followed by a brief overview by staff of the requested withdrawal, the regulatory process, and implications to the public. A hearing coordinator will review the process of public testimony. Testimony will then be heard and recorded into the public record. Finally, staff will provide closing remarks.

Dated: December 18, 2001.

Gene Zimmerman,

San Bernardino National Forest Supervisor.

[FR Doc. 01–31972 Filed 12–27–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

Shipper's Export Declaration Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as mandated by Public Law 106–113, Title XII, ''Security Assistance,'' Subtitle E, ''Proliferation Prevention Enhancement Act of 1999'' and as part of its continuing effort to reduce paperwork and respondent burden, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (U.S.C. 3506(c)(2)(A)), invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Written comments must be submitted on or before February 26, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jerome Greenwell, Foreign Trade Division, U.S. Census Bureau, Room 3125, Federal Office Building No. 3, Washington, DC 20233–0001, 301–457–2238.

SUPPLEMENTARY INFORMATION

I. Abstract:

The Shipper's Export Declaration (SED), Form 7525–V and the electronic equivalent, the Automated Export System (AES) are the basis for the official export trade statistics compiled by the U.S. Census Bureau (Census Bureau) used for determining the balance of trade, a principal economic indicator. Title 13, United States Code, Chapter 9, Sections 301–307 authorizes the collection of these data. Title 15, Code of Federal Regulations, Part 30 contains the regulatory provisions for preparing and filing the SED or the AES record. These data are essential in formulating basic government policy decisions affecting the economy. The U.S. businesses rely heavily on these data to develop export leads, export marketing strategies and assessing the impact of exports on the domestic economy.

The SED/AES records are also used for export control purposes under Title 50, United States Code. The SED/AES records, as official documents or export transactions, enable the U.S. Customs Service (Customs) and the Bureau of Export Administration (BXA) to enforce the Customs and Export Administration Regulations and thereby detect and prevent the export of high technology items or military goods to unauthorized destinations or end users. The Department of State (State Department) uses the SED/AES information to enforce the International Traffic in Arms Regulations (ITAR), Title 22, CFR 120–130, to detect and prevent the export of arms and ammunition to unauthorized destinations.

On November 29, 1999, the President signed H.R. 3194 into law (Public Law 106–113). The short title to this law, as specified in section 1251, is referred to as the ''Proliferation Prevention Enhancement Act of 1999.'' Section 1252 of this law amends Title 13, United States Code, Chapter 9, Section 301, to add Section ''(h)'' authorizing the Department of Commerce, Census Bureau, to require by regulation mandatory reporting requirements for filing export information through the AES. This Act further specifies that all items on the Department of Commerce' Commerce Control List (CCL) and the State Department's of U.S. Munitions List (USML) be reported through the AES, when an SED is required.

As a result of Pub. L. 106–113, the Census Bureau is planning revisions to AES to meet the requirements of the law. The State Department has requested to have additional data items incorporated into the AES in order to accommodate the requirements of the ITAR. The collection of these additional data items are critical to the mission of the State Department in maintaining control over the export of arms and ammunition. The incorporation of these data items into AES will allow the elimination of the requirement for exporters to submit the paper SED to the State Department. The items mentioned above will not be required for the paper SED since the items on the USML or CCL must be filed through AES. Therefore, the additional data items requested by the State Department will not be incorporated on the paper SED. However, the Census Bureau is requesting one additional data item be added to the paper form to bring it up to date with regulatory changes reflected in the AES. With this submission the Census Bureau is requesting clearance for the reporting of the additional export data items.

II. Method of Collection

A paper SED or electronic AES record is required for all export shipments valued over $2,500 from the United States, Puerto Rico, and the U.S. Virgin Islands. The SED or AES record is also required for all licensed shipments, (*i.e.* State Department or BXA export licenses) regardless of value. The SED program is unique among Census Bureau statistical collections since it is not sent to respondents soliciting responses as is the case in surveys. Filing the SED/AES information is mandatory under Title 13, Chapter 9, United States Code. The Census Bureau has seen a progressive growth in the number of electronic filers, with a comparable decrease in the number of paper SED filers. Exporters can access the AES via the Census Bureau's free Internet-based system, AESDirect or they can integrate the AES into their company's network and file directly with Customs. Exporters can purchase paper SEDs from the Government Printing Office or they may have them privately printed. They can also download the SEDs over the Internet and print them on the required ''buff'' colored paper.

For exports to Canada, the United States is substituting Canadian import statistics for U.S. export statistics to Canada in accordance with a Memorandum of Understanding (MOU) signed by both Customs and statistical agencies in both countries. Similarly, under this MOU, Canada is substituting U.S. imports statistics for Canadian exports to the United States. This data exchange eliminates the requirement for U.S. exporters to file any information with the U.S. Government for exports of non-licensed shipments to Canada. This results in the elimination of over seven million SEDs annually. However, for exports to Canada that require a license, a SED or AES record must be filed. Also, a SED or AES record is required for exports from the United States through Canada destined to a country other than Canada.

For this submission, the Census Bureau is planning revisions to the paper SED and the AES. The only change to the paper SED includes adding a box to collect the authorized forwarding agent's Employer Identification Number. Revisions to the AES format include: (1) Adding an additional field to collect a registration code assigned by the Department of State's Office of Defense Trade Controls (ODTC), (2) adding a ''yes'' or ''no'' indicator for the shipment of ODTC significant military equipment, (3) adding a ''yes'' or ''no'' indicator for ODTC eligible party certification, (4) adding an additional field to collect the ODTC USML category code, (5) adding an additional field to collect ODTC USML unit of measure, (6) adding an additional field to collect ODTC USML unit of quantity, and (7) adding an additional field to collect the ODTC export license line number. The AES and the SED currently requires the reporting of an ODTC license number or ODTC (ITAR) exemption citation. These changes will affect only a small portion of the number of AES transactions filed and will have no affect on the overall AES transactions response time of three minutes. Furthermore, because of the significant reduction in the paper filing of SEDs since the last Office of Management and Budget (OMB) clearance approval, the estimated total annual burden hours has decreased.

The U.S. principal party in interests (USPPI) or authorized agents file individual paper SEDs with the exporting carries at the time that each export shipment leaves the United States. For AES, USPPI's or authorized agents file the export data electronically directly with the Census Bureau or Customs, according to the filing provisions established in Title 15, Code of Federal Regulations, part 30, subpart E, Electronic Filing Requirements—Shipper's Export Information.'' The carriers submit the paper SED documents to Customs officials when the carrier departs the United States and Customs then transmits the SEDs to the Census Bureau on a flow basis for statistical processing.

For AES, the Census Bureau extracts export data files from the Customs AES, for statistical processing. As a result of Pub. L. 106–113, the State Department will extract from AES only those records of exports subject to the ITAR.

In summary, the mandatory filing of USML and CCL shipments through the AES will substantially decrease the number of paper SEDs processed monthly and provide more timely and accurate information to Customs, BXA and the State Department for the purposes of export control.

III. Data

OMB Number: 0607–0152.

Form Number: 7525–V, Automated Export System (AES) submissions.

Type of Review: Regular Submission.

Affected Public: Exporters, Forwarding Agents, Export Carriers.

Estimated Number of Respondents: 200,000.

Estimated Number of Responses: 15,043,756.

Estimated Time Per Response: 11.0 minutes for 7525–V 3.0 minutes for AES Submissions.

Estimated Total Annual Burden Hours: 944,188 (SEDs 264,000)(AES 680,188).

Estimated Total Annual Cost: $14,162,820.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Chapter 9 and Public Law 106–113, Title XII, ''Security Assistance,'' Subtitle E, ''Proliferation Prevention Enhancement Act of 1999''.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: and (d) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 20, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–31852 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Special Census Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 26, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC, 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to J. Michael Stump or Josephine Ruffin, Bureau of the Census, Room Number 1314, Building #2, Washington, DC, 20746 and 301–457–1429.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Special Census Program is a reimbursable service offered and performed by the Census Bureau for the government of any state; county, city, or other political subdivision within a state; for the government of the District of Columbia; and for the government of any possession or area over which the U.S. exercises jurisdiction, control, or sovereignty, and other governmental units which require current population data between decennial censuses.

Many states distribute funds based on current population statistics. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, and water treatment facilities.

The Census Bureau will use the following forms to update addresses listed on the Census Bureau's Master Address File and to enumerate populations in special censuses:

- Special Census Enumerator Questionnaire—This interview form will be used to collect special census data at regular housing units (Hus).
- Special Census Special Place Questionnaire—This interview form will be used to collect special census data at group quarters in special places such as hospitals, prisons, boarding and rooming houses, campgrounds, hotels, college dormitories, military facilities, and convents.
- Address Listing Page—This page will include existing addresses from the Census Bureau Master Address File (MAF). Special Census enumerators will update these addresses, if needed, at the time of enumeration.
- Group Quarters Enumeration Control Sheet—This page will be used by Special Census enumerators to list residents/clients at group quarters.
- Housing Unit Add Page—This page will be used by enumerators to add HUs that are observed to exist on the ground and that are not contained on the address listing page.
- Special Place/Group Quarter (SP/GQ) Add Page—This page will be used by enumerators to add special places/group quarters that are observed to exist on the ground and that are not reflected in the address listing page.

The Special Census Program developmental process is in its early stages. Meetings and other planning discussions may require minor changes to the design and content of the forms.

The Special Census Program will operate as a generic OMB clearance including a library of forms and the operational procedures that will be used for the many special censuses we anticipate conducting this decade. The Census Bureau will establish a reimbursable agreement with a variety of potential special census customers that are unknown at this time. Prior to conducting any special census, the Census Bureau will submit documentation to OMB providing the details of the Special Census under consideration. We will also submit for OMB's review and approval, under cover of a change worksheet, any special-purpose questions requested by customers to be added to special census questionnaires.

II. Method of Collection

The Special Census Program will use the Census 2000 Update/Enumerate (U/E) methodology. Enumerators will canvass their assigned areas with an address register that contains addresses obtained from the Census Bureau's Master Address File. Special Census enumerators will update the address information, as needed, based on their observation of HUs and/or SPs/GQs that exist on the ground. Additionally, enumerators will interview households at regular HUs and residents at GQs using the appropriate Special Census questionnaire.

III. Data

OMB Number: None.

Form Number: Not available yet.

Type of Review: Regular.

Affected Public: Individuals or households, business or other for profit entities, not-for-profit institutions.

Estimated Number of Respondents: (September 2002 through early 2008).

Enumerator Questionnaire—848,000 respondents.
Special Place Questionnaire—2000 respondents.
Address Listing Page—848,000 respondents.
Group Quarters Enumeration Control Sheet—375 respondents.
Housing Unit Add Page—1,000 respondents
Special Place/Group Quarters Add Page—150 respondents

Estimated Time Per Response:

Enumerator Questionnaire—about 7 minutes
Special Place Questionnaire—about 5 minutes
Address Listing Page—about one minute
Group Quarters Enumeration Control Sheet—10 minutes
Housing Unit Add Page—about one minute
Special Place/Group Quarters Add Page—about one minute

Estimated Total Annual Burden Hours: Estimated total annual burden hours are 113,527.

Estimated Total Annual Cost: There are no costs to respondents other than that of their time to respond.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 196.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 20, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–31856 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

E–Government Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 26, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Poyta, Chief, Census Management Staff, Governments Division, U.S. Census Bureau, Washington, DC 20233–6800 (301–457–1580).

SUPPLEMENTARY INFORMATION:

I. Abstract

Title 13, section 182, of the United States Code authorizes the Secretary of Commerce to conduct surveys deemed necessary to furnish annual and other interim current data on the subjects covered by the Census of Governments.

The recent development of public services dubbed ''Electronic Government,'' or ''E–Government,'' is a result of the rapid growth of computer access and the Internet. The emergence of electronic technologies has fueled a significant change in the public sector's manner in conducting its business. Current measures of public activity—established in a period before computers—do not provide gauges of this new and important change. The public sector is a major component of the economy, as both a purchaser and deliverer of goods and services. It is important that our Nation measure this development because the potential effects of this new technology include the promise of greater efficiencies in the delivery of public services, more effective communications between the public and its government, and a wider scope of public services available to more people.

The Census Bureau plans to conduct a survey of state governments in order to begin measuring the scope and effects of this new activity. The survey's broad definition of E–Government includes any government process conducted on-line, employing computer enabled electronic devices. Title 13, section 182, of the United States Code authorizes the Secretary of Commerce to conduct surveys deemed necessary to furnish annual and other interim current data on the subjects covered by the Census of Governments. This survey concentrates on three different measurable parts of total Information Technology (IT) and E–Government:

(1) Infrastructure—the costs to governments of providing electronic hardware and software that form the backbone of E–Government, and the personnel and organizational supports for total IT and E-Government;

(2) Processes—the E–Government interactions of citizens, businesses, and other governments with their governments; and

(3) Transactions—measurements for these E–Government processes.

The Census Bureau, as the premier national data collection agency, is uniquely situated to measure E–Government. The current Census Bureau measures of public sector economic activity—used by Federal data analysis agencies such as the Bureau of Economic Analysis and the Federal Reserve Board—provide an important basis for making informed policy decisions. The addition of E-Government information will help governmental leaders at all levels formulate policies that will improve our entire governmental system. Other users of these data will be the State and local governments and related organizations, public interest groups, the academic community, and many business, market and private research organizations.

II. Method of Collection

Basic questionnaires will be sent to the primary technology offices within each state, with additional forms, designed for specific types of departments, agencies, and offices, etc., also incorporated. Information from state governments and the District of Columbia will be compiled by office staff from questionnaire responses collected via standard mail and the Internet.

The Census Bureau will also research the feasibility of developing cooperative data sharing and central collection arrangements with the state governments to minimize respondent burden.

Electronic data collection and dissemination will be developed and incorporated.

OMB Number: None.

Form Number: None.

Type of Review: Regular.

Affected Public: State governments.

Estimated Number of Respondents: 765 (15 agencies per State government).

Estimated Time Per Response: 6 hours.

Estimated Total Annual Burden Hours: 4,590 hours.

Estimated Total Annual Cost: $82,436.40 ($17.96 per hour*).

* Based upon the 2000 Annual Employment Survey—Average hourly rate for state full-time equivalent employees in financial administration.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 United States Code, Section 182.

III. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 20, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–31857 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD NOVEMBER 21, 2001–DECEMBER 17, 2001

Firm name	Address	Date Petition accepted	Product
Elessar Enterprises, Inc	P.O. Box 3476, Homer, Alaska 99603.	11/26/01	Fresh whole salmon.
H & H Swiss Screw Machine Products Co., Inc	1478 Chestnut Ave., Hillside, NJ 07205.	11/26/01	Precision turned screw machine components, made of primarily of copper, used in cable TV connectors, automotive parts and toggle switches.
Woodbury Box Company, Inc	301 McIntosh Parkway, Thomaston, GA 30286.	11/26/01	Industrial and commercial floor mop frames.
Arnold's Baskets	11354 South Choctaw Dr., Baton Rouge, LA 70815.	12/03/01	Wooden baskets.
Cape Cod Doormats of Distinction, Inc	2 C Hinckley Road, Hyannis, MA 02601.	12/03/01	Hand woven polypropylene doormats.
Kannon Motorcycles, L.L.C.	P.O. Box 761, Ketchum, OK 74349	12/03/01	Motorcycles.
Richmond Industries, Inc	1 Chris Court, Dayton, NJ 08810 ...	12/03/01	Non-ferrous castings of bronze, aluminum or metal.
Control Cable, Inc	7261 Ambassador Road, Baltimore, MD 21244.	12/03/01	Cable and cable assemblies used in the computer industry.
Best Tool & Manufacturing Company, Inc	3515 N.E. 33rd Terrace, Kansas City, MO 64117.	12/04/01	Plastic blow molds for food containers.
Wayne Engineering Corporation	701 Performance Drive, Cedar Falls, IA 50613.	12/04/01	Garbage truck bodies and truck-mounted cranes.
American Circuit Technology, Inc	6330 East Hunter Ave., Anaheim, CA 92807.	12/05/01	Printed circuit boards.
Tool Components, Inc	240 East Rosecrans Ave., Gardena, CA 90248.	12/05/01	Machined metal products for the semiconductor industry, water filtration equipment, and threaded inserts for various other industries.
Midwest Hanger Company	4312 Clary Boulevard, Kansas City, MO 64130.	12/05/01	Wire clothes hangers.
NRL Associates, Inc	112 Log Canoe Circle, Stevensville, MD 21666.	12/07/01	Metal and plastic parts for the hand tools and medical industries.
Stamper Black Hills Gold Jewelry, Inc	7201 S. Highway 16, Rapid City, SD 57701.	12/07/01	Gold Jewelry.
American Electric Cable Co., Inc	181 Appleton Street, Holyoke, MA 01040.	12/12/01	Insulated and coated wire and cables, wire sets and harnesses and cable assemblies.
NMW, Inc	428 North Elm, Nowata, OK 74048	12/13/01	Industrial water filters.
E.H. Hall/Westfield Tanning, Inc	360 Church Street, Westfield, PA 16950.	12/13/01	Leather for shoe and boot soles and saddles for the equestrian industry.
Central Expanded Metal, Inc	1213 North Industrial Road, Chandler, OK 74834.	12/14/01	Expanded metal.
Three M Tool and Machine, Inc	8155 Richardson Road, Walled Lake, MI 48390.	12/14/01	Work holding fixtures, cutting tools and dies.
McCammish Manufacturing Co., Inc	148 Winn Avenue, Winchester, KY 40391.	12/19/01	Wood Products, primarily furniture.
Lake Shore Studios, Inc	4200 Niles Road, St. Joseph, MI 49085.	12/20/01	Lamps, lamp shades and frames.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 18, 2001.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 01–31905 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1197]

Expansion of Foreign-Trade Zone 104, Savannah, GA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Savannah Airport Commission, grantee of Foreign-Trade Zone 104, submitted an application to the Board for authority to expand FTZ 104-Site 2 at the Garden city/Ocean Terminals and Site 4 at the SPA Industrial Park, and for authority to include two new sites at the Savannah International Trade and Convention Center (Site 5) and Mulberry Grove (Site 6) in Savannah, Georgia, within the Savannah Customs port of entry (FTZ Docket 47–2000; filed 8/7/00; amended 4/21/01);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 50178, 8/17/00; 66 FR 21739, 5/1/01) and the application, as amended, has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal, as amended, is in the public interest;

Now, Therefore, the Board hereby orders:

The application, as amended, to expand FTZ 104 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 18th day of December 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–31984 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1203]

Approval of Manufacturing Authority; Foreign-Trade Zone 7, IPR Pharmaceuticals, Inc. (Pharmaceuticals), Mayaguez, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Industrial Development Corporation, grantee of Foreign-Trade Zone 7, on behalf of IPR Pharmaceuticals, Inc., has requested authority to manufacture pharmaceutical products under FTZ procedures within FTZ 7—Site L–164–0–63 (Doc. 39–2001);

Whereas, notice inviting public comment has been given in the **Federal Register** (66 FR 49162, 9/26/01);

Whereas, pursuant to section 400.32(b)(1) of the FTZ Board regulations (15 CFR 400), the Secretary of Commerce's delegate on the FTZ Board has the authority to act for the Board in making decisions regarding manufacturing activity within existing zones when the proposed activity is the same, in terms of products involved, to activity recently aproved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)): and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the request is in the public interest;

Now, Therefore, the Board hereby orders:

The application on behalf of IPR Pharmaceuticals, Inc., to manufacture pharmaceutical products under zone procedures within FTZ 7—Site L–164–0–63, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, the 14th day of December 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 01–31985 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32(c)–11–2001)]

Scope Determination Regarding the Effect on Foreign-Trade Zone Board Orders Resulting From Modifications to the Harmonized Tariff Schedule of the United States

Summary: Pursuant to section 400.32 (c) of the FTZ Board regulations (15 CFR part 400), it has been determined that the scope of FTZ Board Orders will not be affected by the January 2002 modification of the Harmonized Tariff Schedule of the United States (HTSUS).

As proposed, on January 1, 2002, modifications will take effect that will change the HTSUS classification numbers for certain product categories. Some Foreign-Trade Zone (FTZ) Board Orders, particularly orders relating to oil refinery subzones, contain references to HTSUS numbers. Such references were intended to describe types of products that were either included in or excluded from the scope of Board actions. The scope of FTZ Board Orders will continue to apply to those products as described in the orders and related appendices, even though the HTSUS number describing the product may change. The scope of FTZ Board Orders should be interpreted as applying to the new HTSUS numbers based on the cross reference table published in the International Trade Commission's (ITC) report, ''Proposed Modifications to the Harmonized Tariff Schedule of the

United States'' (USITC Publication 3430, June 2001). The full report is available on the ITC website: http://www.usitc.gov/332s/332index.htm#SECTION 1205.

Background: In November 1999, the ITC opened investigation No. 1205–5, Proposed Modifications to the Harmonized Tariff Schedule of the United States, in accordance with Section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Under Section 1205, the ITC is charged with reviewing the HTS and recommending modifications when amendments are adopted by the World Customs Organization. The majority of current modifications to the tariff schedule are the result of sessions that took place between October 1993 and May 1999. Any changes to tariff rates are independent of the modification.

The following table provides an example of the HTSUS changes relating to FTZ Board Orders for oil refinery subzones. It is not inclusive.

Current HTS No.	New HTS No.
2710.00.05	2710.99.16
2710.00.05	2710.99.05
2710.00.05	2710.19.05
2710.00.10	2710.99.10
2710.00.10	2710.19.10
2710.00.20	2710.99.21
2710.00.20	2710.19.23
2710.00.25	2710.99.21
2710.00.25	2710.11.25
2710.00.45	2710.99.45
2710.00.45	2710.19.45
2710.00.45	2710.91.00
2710.00.45	2710.11.45

For Further Information Contact: Liz Whiteman or Diane Finver (202–482–2862), Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

Dated: December 17, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–31983 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

User Satisfaction Surveys

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before February 26, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Mclayton@doc.gov*.).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Joseph English, U.S. & Foreign Commercial Service, Export Promotion Service, Room 2116, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3334, and fax number (202) 482–5398.

SUPPLEMENTARY INFORMATION:

I. Abstract

ITA provides numerous export promotion programs to help U.S. businesses. These programs include information products, services, and trade events. To accomplish its mission effectively, ITA needs ongoing feedback on its programs. These information collection items allow ITA to solicit clients opinions about the use of ITA products, services, and trade events. The information is used for program improvement, strategic planning, allocation of resources, and performance measures.

The surveys are part of ITAs effort to implement objectives of the National Performance Review (NPR) and Government Performance and Results Act (GPRA). Responses to the surveys will meet the needs of ITA performance measures based on NPR and GPRA guidelines. These performance measures will serve as a basis for justifying and allocating human and financial resources.

Survey responses will acquaint ITA managers with firms perceptions and assessments of export-assistance products and services. Also, the surveys will enable ITA to track the performance of overseas posts. This information is critical for improving the programs.

Survey responses are used to assess client satisfaction, determine priorities, and identify areas where service levels and benefits differ from client expectations. Clients benefit because the information is used to improve services provided to the public. Without this information, ITA is unable to systematically determine client perceptions about the quality and benefit of its export-promotion programs.

II. Method of Data Collection

ITA faxes, mails, emails or telephones surveys to clients and is developing electronic delivery and collection methods as well.

III. Data

OMB Number: 0625–0217.

Form Number: ITA–4108P–A1, ITA–4110P, etc.

Type of Review: Revision-regular submission.

Affected Public: ITA clients that purchased products and services.

Estimated Number of Respondents: 20,780.

Estimated Time Per Response: Range from 05–60 minutes.

Estimated Total Annual Burden Hours: 3,298.

Estimated Total Annual Costs: The estimated annual cost for this collection is $197,880.00 ($115,430.00 for respondents and $ 82,450.00 for the federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 20, 2001.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–31845 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–820]

Silicomanganese From Venezuela: Notice of Postponement of Final Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Postponement of final determination of antidumping duty investigation.

EFFECTIVE DATE: December 28, 2001.

SUMMARY: The Department of Commerce (the Department) is postponing the final determination in the antidumping duty investigation of silicomanganese from Venezuela.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Postponement of Final Determination and Extension of Provisional Measures

On November 9, 2001, the Department published the affirmative preliminary determination in the investigation of silicomanganese from Venezuela. *See Notice of Preliminary Determination of Sales at Less Than Fair Value; Silicomanganese From Venezuela,* 66 FR 56,635. Pursuant to section 735(a)(2) of the Tariff Act and 19 CFR 351.210(b)(2)(ii) of the Department's regulations, on December 5, 2001, respondent Hornos Electricos de Venezuela, S.A. (Hevensa) requested the Department extend the deadline for the final determination for the full sixty days, as permitted by the statute and regulations. Hevensa also agreed to the extension of provisional measures (*i.e.,* suspension of liquidation) from a four-month period to a period not to exceed six months, pursuant to 19 CFR 351.210(e)(2).

Section 735(a)(2) of the Tariff Act provides that a final determination may be postponed not later than 135 days after the date of publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2) require requests by respondents for postponement of a final determination be accompanied by a request for the extension of provisional measures from a four-month period to not more than six months.

In accordance with 19 CFR 351.210(b)(2)(ii), because (i) our preliminary determination is affirmative, (ii) the respondent requesting postponement accounts for a significant proportion of the exports of the subject merchandise, and (iii) no compelling reasons for denial exist, we are granting Hevensa's request and are postponing the final determination to no later than 135 days after publication of the preliminary determination in the **Federal Register**. Suspension of liquidation will be extended accordingly. This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: December 19, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–31982 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–831]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at not less than fair value.

SUMMARY: We preliminarily determine that structural steel beams from Italy are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Alysia Wilson or Michael Strollo, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0108 or (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department's'') regulations are to 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan*, 66 FR 33048 (June 20, 2001)) (*Initiation Notice*), the following events have occurred.

On July 9, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of structural steel beams from Italy are materially injuring the United States industry (*see* ITC Investigation Nos. 731–TA–935–942 (Publication No. 3438)).

On July 18, 2001, we selected Duferdofin SpA (''Duferdofin''), the largest producer/exporter of structural steel beams from Italy, as the mandatory respondent in this proceeding. For further discussion, see the memorandum to Louis Apple, Director, Office 2, from the Team Regarding: Respondent Selection, dated July 18, 2001. We subsequently issued the antidumping questionnaire to Duferdofin on July 18, 2001.

During the period August through November 2001, the Department received responses to the Department's

original and supplemental questionnaires.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (*See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan*, 66 FR 51639 (October 10, 2001).) On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (*See Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan*, 66 FR 56078 (November 6, 2001).)

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on December 18, 2001, the petitioners requested that, in the event of a negative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. In accordance with 19 CFR 351.210(b), because our preliminary determination is negative and no compelling reasons for denial exist, we are granting the petitioners' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**.

Scope of Investigation

The scope of these investigations covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of these investigations unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of these investigations: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (*see* 66 FR 33048–33049). Interested parties submitted such comments by July 10, 2001. Additional comments were subsequently submitted by interested parties.

Pursuant to the Department's solicitation of scope comments in the Initiation Notice, interested parties in this and the concurrent structural steel beams investigations request that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles.

With respect to the scope-exclusion requests for the A913/65 beam and forklift mast profiles, the interested parties rely upon 19 CFR 351.225(k)(2) and reason that, in general, these products differ from the structural steel beams covered by the scope of the investigations in terms of physical characteristics, ultimate uses, purchaser expectations, channels of trade, manner of advertising and display and/or price. They also argue that these products are not produced by the petitioners.

In considering whether these products should be included within the scope of the investigations, we analyzed the arguments submitted by all of the interested parties in the context of the criteria enumerated in the court decision *Diversified Products Corp.* v. *United States*, 572 F. Supp. 883, 889 (CIT 1983) (''*Diversified*''). For these analyses, we relied upon the petition, the submissions by all interested parties, the International Trade Commission's (''ITC'') preliminary determination, and other information.

After considering the respondent's comments and the petitioners' objections to the exclusion requests regarding the A913/65 beam, we find that the description of this grade of structural steel beam is dispositive such that further consideration of the criteria provided in their submissions is unnecessary. Furthermore, the description of the merchandise contained in the relevant submissions pertaining to this grade of beam does not preclude this product from being within the scope of the investigations. Accordingly, we preliminarily determine that the A913/65 beam does not constitute a separate class or kind of merchandise and, therefore, falls within the scope as defined in the petition.

With respect to forklift mast profiles, having considered the comments we received from the interested parties and the criteria enumerated in *Diversified*, we find that the profiles in question, being doubly-symmetric and having an I-shape, fall within the scope of the investigations. These profiles also meet the other criteria included in the scope language contained in the petition. While the description by the interested party requesting the exclusion indicates some differences, such as in price, between forklift mast profiles and structural steel beams, these differences are not sufficient to recognize forklift mast profiles as a separate class or kind of merchandise. However, given these differences between forklift mast profiles and structural steel beams, we preliminarily determine that forklift mast profiles should be separately identified for model-matching purposes.

We also received a scope-exclusion request by an interested party for fabricated steel beams. This request was subsequently withdrawn pursuant to an agreement with the petitioners to clarify the scope language by adding that ''* * * beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings are outside the scope definition.'' However,

''* * * if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.'' Accordingly, we modified the scope definition to account for this clarification. *See* the ''Scope'' section above.

We have addressed these scope-exclusion requests in detail in a Memorandum to Louis Apple and Laurie Parkhill, Directors, AD/CVD Enforcement Group I, Offices 2 and 3, respectively, from The Structural Steel Beams Teams Re: Scope Exclusion Requests, dated December 19, 2001.

Period of Investigation

The period of investigation (''POI'') is April 1, 2000, through March 31, 2001.

Fair Value Comparisons

To determine whether sales of structural steel beams from Italy to the United States were made at less than fair value (''LTFV''), we compared the constructed export price (''CEP'') to the normal value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Duferdofin in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: form; shape/size (section depth); strength/grade; and coating.

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Duferdofin's U.S. sales as CEP sales because they were made in the United States by Duferdofin's U.S. affiliate on behalf of Duferdofin, within the meaning of section 772(b) of the Act.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for price-billing errors. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, U.S. inland freight expenses (*i.e.,* freight from port to warehouse and freight from warehouse to the customer), post-sale warehousing expenses, truck loading expenses, and U.S. barging expenses. For post-sale warehousing expenses, we reallocated this expense to those transactions where the terms of sale indicated that warehousing expenses were incurred. For further discussion, see the Memorandum to the File from Michael Strollo and Alysia Wilson Re: Calculations Performed for Duferdofin S.p.A. (''Duferdofin'') for the Preliminary Determination in the 2000–2001 Antidumping Duty Investigation of Structural Steel Beams (''Beams'') from Italy, dated December 19, 2001 (''Sales Calculation Memorandum''). In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions, imputed credit costs, and bank charges), and indirect selling expenses (including inventory carrying costs).

For those U.S. sales for which Duferdofin did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.,* December 19, 2001) in the calculation of imputed credit expenses. In addition, we recalculated Duferdofin's reported U.S. indirect selling expenses to include interest expenses. We offset this expense by interest income and imputed credit (up to the amount of interest expense), in accordance with our practice. *See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea,* 66 FR 3540 (January 16, 2001) and accompanying issues and decision memorandum at *Comment 1.* For further discussion, also see the Sales Calculation Memorandum. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Duferdofin and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of structural steel beams in the home market were made at prices below their cost of production (''COP''). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COPs (*see Initiation Notice* at 66 FR 33048, 33051).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (''G&A''), including interest expenses, and home market packing costs (*see* ''Test of Home Market Sales Prices'' section below for treatment of home market selling

expenses). We relied on the COP data submitted by Duferdofin except as noted below.

1. We revised COP to include additional depreciation expense not included in Duferdofin's reported costs.

2. We revised the G&A rate to include foreign exchange gains and losses on accounts payable and miscellaneous expense in the numerator of the calculation. We also excluded the ''variation in stocks of products in process, semifinished and finished products,'' packing expenses and G&A expense from the denominator of the calculation.

3. We revised the financial expense rate to exclude the ''increase in work in progress and finished products,'' packing expense and other personnel expense from the denominator of the calculation.

See Memorandum from Ji Young Oh to Neal Halper, Director, Office of Accounting, dated December 19, 2001, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination (''Cost Calculation Memorandum'').

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Duferdofin's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices [3]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* Court Nos. 00–1058,–1060 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731 (November 19, 1997).

We obtained information from Duferdofin regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by the Duferdofin for each channel of distribution.

Duferdofin reported home market sales through three channels of distribution and to four customer categories. We examined the chain of distribution and the selling activities associated with sales reported by Duferdofin to each of its customer categories in the home market. The information on the record demonstrates that Duferdofin performs the same selling functions across channels of distribution and customer categories. *See* Appendix A–2 of Duferdofin's response to the Department's supplemental questionnaire, dated November 13, 2001. Specifically, Duferdofin indicated that to all customers, regardless of channel of distribution, it provides: a high level of freight/delivery arrangements, a medium to high level of customer visits and customer approval/credit research, a medium level of inventory maintenance/warehousing and computer services/accounts receivable, a low to medium level of market research and strategic planning, and a low level of pre-sale engineering advice, post sale servicing, rejected merchandise handling, customer

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common structural steel beams selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on constructed value (''CV''), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

solicitation, and transit claims. Because Duferdofin performs the same selling functions with the same intensity for all its customers regardless of their channel of distribution, we preliminarily determine that Duferdofin made home market sales at one LOT during the POI.

In the U.S. market, Duferdofin made only CEP sales through its affiliated importer/reseller Duferco Steel Inc. (''DSI''). Duferdofin reported that, for sales to the United States, virtually all selling functions are performed by DSI, with the exception of Italian inventory maintenance and international shipping arrangements, which are performed by Duferdofin.

As set forth in 19 CFR 351.412(f), a CEP offset will be granted where (1) normal value is compared to CEP sales, (2) normal value is determined at a more advanced LOT than the LOT of the CEP, and (3) despite the fact that the party has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability. Duferdofin stated that after CEP adjustments are made, it performs only two selling functions for its U.S. sales to DSI (Italian inventory maintenance and international shipping arrangements) whereas it performs fourteen selling functions in the home market. Since the selling functions performed by Duferdofin for its sales to the United States, after CEP adjustments are made, are substantially less than those performed for Duferdofin's home market sales, we preliminarily determine that Duferdofin's home market sales are being made at a more advanced LOT than those to the United States. Because there is only one level of trade in the home market, the data available do not permit us to determine the extent to which this difference in LOT affects price comparability. Therefore, in accordance with 19 CFR 351.412(f), we are granting Duferdofin a CEP offset.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We made deductions, where appropriate, from the starting price for early payment discounts. We also made deductions for movement expenses, including inland freight (plant to distribution warehouse, plant/warehouse to customer, and affiliated reseller to customer) and warehousing under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and commissions.

We disallowed Duferdofin's claim for a rebate adjustment because Duferdofin failed to respond to the Department's requests to distinguish between pre- and post-petition rebates. *See* the Sales Calculation Memorandum.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

Exporter/manufacturer	Weighted-average margin percentage
Duferdofin S.p.A	0.57

Because the estimated weighted-average dumping margin for Duferdofin is *de minimis,* we are not directing the Customs Service to suspend liquidation of entries of structural steel beams from Italy.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(3) of the Act, the ITC will determine within 75 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: December 19, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–31979 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–831]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value

SUMMARY: We preliminarily determine that structural steel beams from Germany are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Edythe Artman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–3931, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department's'') regulations are to the regulations at 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan,* 66 FR 33048 (June 20, 2001) (*Initiation Notice*)), the following events have occurred.

On July 9, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of structural steel beams from Germany are materially injuring the United States industry (see ITC Investigation Nos. 731–TA–935–942 (Publication No. 3438)).

On July 26, 2001, we selected the two largest producers/exporters of structural steel beams from Germany as the mandatory respondents in this proceeding. For further discussion, see Memorandum to Susan H. Kuhbach, Senior Director Office 1, from The Team Re: Respondent Selection dated July 26, 2001. We subsequently issued the antidumping questionnaire to Stahlwerk Thüringen GmbH (''SWT'') and Salzgitter AG (''Salzgitter'') on July 26, 2001.

During the period August through November 2001, the Department received responses to sections A, B, C and D of the Department's original and supplemental questionnaires from SWT. The Department did not receive any responses from Salzgitter.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (See *Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 51639 (October 10, 2001).) On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (See *Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 56078 (November 6, 2001).)

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 21, 2001, SWT requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) SWT accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The scope of these investigations covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of these investigations unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of these investigations: (1) structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (see *Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (*see* 66 FR 33048–33049). Interested parties submitted such comments by July 10, 2001. Additional comments were subsequently submitted by interested parties.

Pursuant to the Department's solicitation of scope comments in the *Initiation Notice,* interested parties in this and the concurrent structural steel beams investigations request that the following products be excluded from the scope of the investigations: (1) beams of grade A913/65 and (2) forklift mast profiles.

With respect to the scope-exclusion requests for the A913/65 beam and forklift mast profiles, the interested parties rely upon 19 CFR 351.225(k)(2) and reason that, in general, these products differ from the structural steel beams covered by the scope of the investigations in terms of physical characteristics, ultimate uses, purchaser expectations, channels of trade, manner of advertising and display and/or price. They also argue that these products are not produced by the petitioners.

In considering whether these products should be included within the scope of the investigations, we analyzed the arguments submitted by all of the interested parties in the context of the criteria enumerated in the court decision *Diversified Products Corp. v. United States,* 572 F. Supp. 883, 889 (CIT 1983) (''*Diversified*''). For these analyses, we relied upon the petition, the submissions by all interested parties, the International Trade Commission's (''ITC'') preliminary determination, and other information.

After considering the respondent's comments and the petitioners' objections to the exclusion requests regarding the A913/65 beam, we find that the description of this grade of structural steel beam is dispositive such that further consideration of the criteria provided in their submissions is unnecessary. Furthermore, the description of the merchandise contained in the relevant submissions pertaining to this grade of beam does not preclude this product from being within the scope of the investigations. Accordingly, we preliminarily determine that the A913/65 beam does not constitute a separate class or kind of merchandise and, therefore, falls within the scope as defined in the petition.

With respect to forklift mast profiles, having considered the comments we received from the interested parties and the criteria enumerated in *Diversified,* we find that the profiles in question, being doubly-symmetric and having an I-shape, fall within the scope of the investigations. These profiles also meet the other criteria included in the scope language contained in the petition. While the description by the interested party requesting the exclusion indicates some differences, such as in price, between forklift mast profiles and structural steel beams, these differences are not sufficient to recognize forklift mast profiles as a separate class or kind of merchandise. However, given these differences between forklift mast profiles and structural steel beams, we preliminarily determine that forklift mast profiles should be separately identified for model-matching purposes.

We also received a scope-exclusion request by an interested party for fabricated steel beams. This request was subsequently withdrawn pursuant to an agreement with the petitioners to clarify the scope language by adding that ''* * * beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings are outside the scope definition.'' However, ''* * * if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.'' Accordingly, we modified the scope definition to account for this clarification. *See* the ''Scope'' section above.

We have addressed these scope-exclusion requests in detail in a Memorandum to Louis Apple and Laurie Parkhill, Directors, AD/CVD Enforcement Group I, Offices 2 and 3, respectively, from The Structural Steel Beams Teams Re: Scope Exclusion Requests, dated December 19, 2001.

Period of Investigation

The period of investigation (''POI'') is April 1, 2000, through March 31, 2001.

Fair Value Comparisons

With respect to SWT, to determine whether sales of structural steel beams from Germany to the United States were made at less than fair value (''LTFV''), we compared the constructed export price (''CEP'') to the normal value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the SWT in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: Form; shape/size (section depth); strength/grade; and coating.

SWT reported different forms in the home market for beams that had ''special finishing'' and it reported different strength/grades in the home market for beams that had different notch-toughness requirements. SWT did not demonstrate that the hot-formed beams with ''special finishing'' should be distinguished from other hot-formed beams. Neither did SWT demonstrate that the grades that had different notch-toughness requirements should be distinguished from other beams that had the same grade (but not the notch-toughness requirements). Therefore, we did not differentiate the forms either on the basis of ''special finishing'' or on the basis of notch toughness.

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, all U.S. sales of merchandise produced by SWT are made in the United States by TradeARBED Inc. (''TANY''), which is a reseller affiliated with SWT.

We based CEP on the packed FOB or CIF prices to unaffiliated purchasers in the United States. We made adjustments for price-billing errors. We made deductions for rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. inland freight expenses (*i.e.,*

freight from port to warehouse), and warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit costs) and indirect selling expenses (including inventory carrying costs).

For the U.S. sales for which SWT did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.,* December 19, 2001) in the calculation of imputed credit expenses.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by SWT and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

A. Home-Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home-market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Affiliated-Party Transactions and Arm's-Length Test

The Department's standard practice with respect to the use of home-market sales to affiliated parties for NV is to determine whether such sales are at arm's-length prices. Therefore, in accordance with that practice, we performed an arm's-length test on SWT's sales to affiliates as follows.

We excluded sales to affiliated customers in the home market not made at arm's-length prices from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993).

In accordance with 19 CFR 351.403(d), where the respondent's sales to its affiliates constituted at least five percent of the total home-market sales and these sales failed the arm's-length test, we normally use the sales made by the affiliates to unaffiliated customers in our analysis. Because SWT did not report these sales as we requested, we relied on partial adverse facts available in order to estimate the downstream sales prices for the sales of these customers that we match to U.S. sales. See the ''Facts Available'' section below for a detailed discussion of this use of partial facts available.

C. Cost-of-Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of structural steel beams in the home market were made at prices below their cost of production (''COP''). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (see *Initiation Notice*, 66 FR at 33048, 33051).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (''G&A''), interest expenses, and home-market packing costs (*see* ''Test of Home-Market Sales Prices'' section below for treatment of home-market selling expenses). We relied on the COP data submitted by SWT and TANY, except in specific instances. We revised the consolidated financial expense rate to exclude interest income offsets for dividends and trade receivables. We revised the denominator in the consolidated financial expense rate calculation to reflect cost of goods sold rather than raw materials. *See* Memorandum from Heidi Norris to Neal Halper, Director Office of Accounting, dated December 19, 2001, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination (''Cost Calculation Memorandum'').

2. Test of Home-Market Sales Prices

On a product-specific basis, we compared the weighted-average COP to the home-market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, rebates, discounts, direct and indirect selling expenses, and packing expenses. In determining whether to disregard home-market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP during a POI, we determine that the below-cost sales represent ''substantial quantities'' of sales within an extended period of time, pursuant to section 773(b)(1)(A) of the Act. In such cases, we also determine if such sales were made at prices which permit recovery of all costs within a reasonable period of time, pursuant to 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of SWT's home-market sales were at prices less than the COP and, therefore, the below-cost sales were made within an extended period of time in substantial quantities. In addition, because we compared the price to the weighted-average COP for the POI, we determined

that the below-cost sales were not made at prices which permitted the recovery of all costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison-market sales (*i.e.*, NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc.* v. *United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from SWT regarding the marketing stages involved in making the reported home-market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. SWT's LOT findings are summarized below.

We examined the chain of distribution and the selling activities associated with sales reported by SWT to distributors in the home market. SWT's sales to different distributors did not differ from each other with respect to selling activities (*e.g.*, market research, advertising and promotion, technical services, sales calls and demonstrations). Based on our overall analysis, we found that all of SWT's sales to distributors constituted one LOT. SWT did not provide any information regarding the selling activities associated with the downstream sales by the distributors in spite of our request for this information. Therefore, we have assumed that SWT and its affiliates performed the same selling activities as SWT performed for sales to distributors and that the LOT of the downstream sales is the same as the LOT of the sales to distributors.

In the U.S. market, SWT reported CEP sales only. Therefore, we treated all of SWT's U.S. sales as sales to an affiliated importer (*i.e.*, at the constructed, or CEP LOT) and found only one LOT. This CEP LOT differed considerably from the home-market LOT in that SWT reported a lower intensity of selling activities associated with market research, advertising, technical service, sales calls and demonstrations, engineering services, and warranties for the CEP LOT than the home-market LOT. Therefore, we found the CEP level of trade to be different from the home-market LOT and to be at less advanced stages of distribution than the home-market LOT. Consequently, we could not match CEP sales at the same LOT in the home market. Furthermore, we have no information that provides an appropriate basis for determining a LOT adjustment.

Because there is only one LOT in the home market, it is not possible to determine if there is a pattern of consistent price differences between the sales on which normal value is based and home market sales at the LOT of the export transaction. Accordingly, because the data available do not form an appropriate basis for making a level-of-trade adjustment but the home-market LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to normal value in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) The indirect selling expenses on the home-market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

E. Calculation of Normal Value Based on Comparison-Market Prices

We calculated NV based on delivered prices in the home market to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We made adjustments for price-billing errors. We made deductions, where appropriate, from the starting price for discounts and rebates. We also made deductions for movement expenses, including inland freight, and inland insurance under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and warranties.

We also deducted home-market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

F. Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhat along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine whether in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common structural steel beams selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

According to section 776(b) of the Act, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997).

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. However, section 776(c) provides that, when the Department relies on secondary information rather than on information obtained in the course of a investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

1. Salzgitter

On July 26, 2001, we issued a questionnaire to Salzgitter. We obtained confirmation from Federal Express that the questionnaire was delivered to Salzgitter on July 30, 2001. On August 10, 2001, we sent a letter of clarification of our questionnaire to Salzgitter. We obtained confirmation from Federal Express that this letter was delivered to Salzgitter on August 13, 2001. Salzgitter did not respond to our questionnaire.

Because Salzgitter did not respond to our questionnaire and therefore withheld information requested by the Department, we find it necessary, under section 776(a)(2) of the Act, to use the facts otherwise available in order to calculate a dumping margin for this company.

We find that, by not responding to our questionnaire, Salzgitter failed to cooperate by not acting to the best of its ability to comply with a request for information. Therefore, pursuant to section 776(b) of the Act, we find it appropriate to use an inference that is adverse to its interests in selecting from among the facts otherwise available. By doing so, we ensure that Salzgitter will not obtain a more favorable result by failing to cooperate than had it cooperated fully.

In selecting from among the facts otherwise available and using an adverse inference, we reviewed the information provided in the petition and in the response submitted by SWT. The petition contained a margin calculation for each of three products sold by Salzgitter. See *Initiation of Antidumping Duty Investigations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 33048 (June 20, 2001), for a review of the methodology used by the petitioner for its calculations of export price and normal value. One of these margins was higher than the margin that we calculated for SWT. Hence, we selected this margin for purposes of corroboration.

We first corroborated the U.S. price from the petition (the same price being provided for all three products) by comparing it to prices of comparable product—product of the same grade and section depth—sold by SWT. We found that SWT made sufficient sales of the comparable product at similar or lower prices in the United States in order to corroborate the price provided in the petition. For the ocean freight and U.S. duty expenses, we likewise found that the petition contained the same expenses for each of the three products and that the percentage of sales by SWT with ocean freight and U.S. duty expenses in excess of these amounts of expenses were sufficient to corroborate the amounts provided in the petition. We were unable to corroborate the port charges from the petition, since these were in excess of those reported by SWT by a significant percentage. Thus, we selected the weighted-average port charges reported by SWT for use in calculating a facts-available margin for Salzgitter.

We then found that SWT made sufficient home-market sales at prices similar to or above the highest home-market price provided in the petition. Thus, we were able to corroborate this price and we selected the home-market prices from the petition for use in calculating the facts-available margin. One COP amount was provided in the petition for each of the three products sold by Salzgitter. We were not able to corroborate this amount, since it exceeded the highest COP reported by SWT for a comparable product. Thus, we selected the highest COP amount reported by SWT to estimate whether Salzgitter's home-market prices were made below the cost of production.

Using the information corroborated and selected, we performed a below-cost test and found that none of the three home-market prices provided in the petition were below the selected COP.

Taking the highest of these prices, we compared it to the export price, based on the U.S. information corroborated and selected, and calculated the margin between the two amounts, as is our practice. See *Notice of Final Determination of Sales at Less Than Fair Value: Welded Large Diameter Line Pipe from Japan,* 66 FR 47172, 47173 (September 11, 2001). This margin of 35.75 percent, based on facts otherwise available and using an adverse inference in selecting from among those facts, is our preliminary margin for Salzgitter. Because it is a preliminary determination, we will consider all of the margins on the record at the time of the final determination in order to determine the most appropriate final margin for Salzgitter.

For a detailed discussion of the calculation of the margin for Salzgitter, see the Decision Memorandum for Salzgitter AG for the Preliminary Results of the Less-Than-Fair-Value Investigation of Structural Steel Beams from Germany for the Period of Investigation April 1, 2000, through March 31, 2001, dated December 19, 2001.

2. SWT

Normally, in accordance with 19 CFR 351.403(d), where a respondent's sales to its affiliates constituted at least five percent of the total home-market sales and these sales failed the arm's-length test, we use the sales made by the affiliates to unaffiliated customers in our analysis. However, in this case, SWT did not report the sales made by the affiliates to unaffiliated customers. Because we do not have the data we need to use our normal methodology, because SWT did not provide the information we requested, and because we find, as described below, that SWT has significantly impeded this proceeding in not providing the information we requested, the use of facts available with regard to these sales is warranted.

In this proceeding, SWT has not complied with our requests for information with regard to downstream sales. We have given SWT two opportunities to remedy or explain the deficiency in its response. As discussed below, SWT has not remedied or adequately explained the deficiency in its response.

We sent a questionnaire to SWT on July 26, 2001. In that questionnaire, we asked that SWT report the resales by affiliated customers to unaffiliated customers instead of the sales by SWT to affiliated customers. SWT did not provide the downstream sales by its affiliated customers in the home market, telling us that it could not do so. See SWT's section A response dated August 30, 2001, at page A–3. SWT stated that its affiliated resellers ''co-mingle in their warehouse structural steel beams from all their suppliers'' and that ''these affiliated resellers will not necessarily record the origin of the product in their sales records.'' *Id.* SWT further stated that the ''situation is further complicated by the fact that part of SWT's inventory systems, while maintained in electronic format, differ throughout the organization. The inability to link data and an inconsistency between database layouts and data codes would make it both time consuming and difficult (and at times impossible) for SWT's affiliated resellers to link downstream sales of structural steel beams to the beams they purchased from SWT.'' *Id.*

SWT expanded on its explanation in a letter dated October 1, 2001. SWT contends that it would be ''impossible'' to provide the downstream sales data as the Department requested. However, SWT focused on the difficulty in reporting downstream sales of beams that are of a grade which we do not use in our normal-value comparisons (hereinafter, ''Grade B''). With regard to the grade sold in the United States (hereinafter, ''Grade A''), SWT stated that ''traceability of [Grade A] material is possible'' and ''for [Grade A] products, the inspection certificate will always go to the end customer. Nevertheless, because the link, in these situations, is not recorded in any retrievable system, and because historical sales records do not provide any information nor provide any basis for permitting retrieval through an electronic format, obtaining the information requested by the Department is impossible.'' See SWT letter dated October 1, 2001, at pages 4–5. Thus, it appears that SWT could have provided the downstream sales for Grade A beams, but that the operation of assembling this data would have to be done manually.

We reiterated our request for the downstream sales in a supplemental questionnaire on October 17, 2001. In response to our request, SWT submitted documents demonstrating the difficulty or impossibility of gathering downstream sales. However, all documents pertained to Grade B beams. SWT did not submit documentation showing that it could not report information on Grade A beams.

We sent a second supplemental questionnaire to SWT on November 27, 2001, requesting that SWT report only the downstream sales of Grade A beams. We also limited the reporting requirements for SWT so that it only had to report downstream sales for those affiliates that failed the arm's-length test (as identified in our supplemental questionnaire). We asked that SWT explain, if it did not report these limited downstream sales, why it was unable to do so in light of the fact that the sales of this merchandise to these customers accounts for a relatively low quantity of sales.

SWT did not report the downstream sales even on this limited basis. Instead, SWT told us, with respect to Grade A beams sold by two of the affiliates that failed the arm's-length test, that the beams had been sold prior to their being resold to the first unaffiliated party and, therefore, there are no sales records to end-customers. With regard to these customers, SWT stated that, prior to any re-sale from the related purchasers, the products of SWT would have been co-mingled with non-SWT product. SWT further told us that, with regard to one of the customers, some of the beams have not yet been resold and, therefore, there are no downstream sales. Finally, SWT stated that, with regard to a third customer, while obtaining the downstream sales would be possible, it would be ''an impracticable effort when viewed in the context of all tonnage that would have to be traced for the reporting of the detailed information on each downstream sale—a significantly impracticable effort in terms of cost and man-hours.'' See SWT's December 6, 2001, submission at pages 3–4.

We find SWT's explanation unconvincing for the following reasons. First, SWT did not explain why it could not report these sales given the relatively small quantity of sales that would have to be captured. For example, SWT states that obtaining the downstream sales information for the third customer would be ''a significantly impracticable effort in terms of cost and man-hours'' but it did not explain why that was the case given that the quantity of that customer's sales of Grade A beams is very low.

Second, the fact that some of the merchandise sold to one of the affiliates has not yet been resold does not justify not reporting that merchandise which has been resold. Indeed, the fact that the affiliate was able to report that some of the merchandise was not yet resold suggests that the company was able to trace its inventory to particular purchases from SWT.

Third, SWT states that traceability of the merchandise is complicated due to the co-mingling with non-SWT product and that it would be ''impossible'' for the reasons explained in the October 1, 2001, letter as described above.

However, the October 1, 2001, letter suggests that Grade A beams *can* be traced and that the problem is that it cannot be done electronically. SWT does not explain why the tracing of sales of Grade A beams could not be done manually given the small quantity of sales in question. Furthermore, if SWT had required more time to obtain the information we requested, it could have asked for an extension of the deadline to respond to our request. Although we have not always granted SWT the entire amount of time it requested when it has requested extensions, we have not denied SWT's requests for additional time to respond to our requests for information.

Finally, SWT claims that there are no sales records to end-customers for some of the merchandise sold by these affiliates. This is not an adequate justification for not reporting these sales. Because the facts of this matter are proprietary, please see the SWT preliminary analysis memorandum dated December 19, 2001, for a full description. Also, this is the first time SWT made the Department aware of this complication. Had SWT made us aware of this circumstance previously, we could have instructed SWT on the proper methodology for reporting such sales.

In sum, we are not convinced that SWT, acting to the best of its ability, could not report the downstream sales of Grade A beams sold to the parties that failed the arm's-length test. Indeed, it appears that SWT has made no attempt to gather the downstream sales information as of this date, even though it had been notified that it should report its downstream sales on July 26, 2001, or, in the alternative, a limited number of downstream sales on November 27, 2001. Furthermore, SWT has not provided us an adequate explanation for why it cannot report the more limited selection of downstream sales identified by the Department in its November 27, 2001, supplemental questionnaire.

Therefore, we find it appropriate to rely on the facts available in order to estimate the downstream sales prices of Grade A beams sold by the parties that failed the arm's-length test. Also, because we have preliminarily determined that SWT has not acted to the best of its ability in reporting these sales, we find that it is appropriate to use an adverse inference in estimating these downstream sales prices.

In the course of performing the arm's-length test, we have calculated customer-specific price ratios. We calculated these ratios on a model-specific basis by dividing the weighted-average price of sales to the affiliate by the weighted-average price of sales to unaffiliated parties. We then weight-averaged the model-specific ratios for each customer. As stated above, where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length.

As adverse facts available, we have recalculated the prices of Grade A beams sold to the parties that failed the arm's-length test. We recalculated this price by multiplying the reported prices by the highest customer ratio we found among SWT's affiliates and dividing the product by the customer ratio for each affiliate that failed the arm's-length test.

For a detailed discussion of the use of facts otherwise available for affiliated sales, see the SWT Preliminary Determination Analysis Memorandum dated December 19, 2001.

We intend to examine this issue further at verification.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
SWT	6.58
Salzgitter	35.75
All Others	[1] 6.58

[1] Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero or *de mimimis*, or determined entirely on facts available. Because we determined Salzgitter's margin entirely on facts available, we used SWT's margin as the all-others rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number;

(2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: December 19, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–31980 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–869]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From The People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that structural steel beams from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5287 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statue and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that structural steel beams from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV for the period of investigation (''POI''), October 1, 2000, through March 31, 2001, are shown in the ''Suspension of Liquidation'' section of this notice.

Background

On June 20, 2001, the Department of Commerce (''the Department'') published in the **Federal Register** the *Notice of Initiation of Antidumping Duty Investigations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan* (66 FR 33048). The Department notified the U.S. Embassy in the PRC of the initiation of this investigation on June 12, 2001.

On July 9, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of structural steel beams from the PRC are materially injuring the United States industry (*see* ITC Investigation Nos. 731–TA–935–942 (Publication No. 3438)).

On July 17, 2001, the Department issued its antidumping questionnaire to the Chinese Ministry of Foreign Trade & Economic Cooperation with a letter requesting that it forward the questionnaire to all Chinese exporters of structural steel beams who had shipments during the POI. We also sent courtesy copies of the antidumping questionnaire to the following possible producers/exporters of subject merchandise named in the petition: Chongqing Iron & Steel (Group Co. Ltd.), Fushun Special Steel Co. Ltd., Guangzhou Iron & Steel Holdings Ltd., Hangzhou Iron & Steel Group Co., Hefei Iron & Steel Co., Jinan Iron & Steel Group, Lingyuan Iron & Steel Group Co. Ltd., Maanshan Iron & Steel Co., Ltd (''Maanshan''), Shanghai Pudong Iron & Steel (Group) Co. Ltd., Taiyuan Iron & Steel (Group) Co. Ltd., and Wuhan Iron & Steel Group Co.

During the period August through November 2001, the Department received responses to sections A, C, and D of the Department's original and supplemental questionnaires from Maanshan. We received no other responses to our questionnaire.[1]

On September 6, we requested publicly-available information for valuing the factors of production and comments on surrogate-country selection. We received comments from Maanshan and from the Committee for Fair Beam Imports (''petitioners'') on November 29, 2001.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (*See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 51639 (October 10, 2001).) On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (*See Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 56078 (November 6, 2001).)

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on December 13, 2001, Maanshan requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Maanshan accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling

[1] The Hangzhou Iron & Steel Group and the Jinan Iron & Steel Group notified the Department via facsimile on July 28, 2001, and August 2, 2001, respectively, that they had no shipments of the subject merchandise during the POI. The Department put this information on the administrative record of this proceeding.

reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (*see* 66 FR 33048–33049). Interested parties submitted such comments by July 10, 2001. Additional comments were subsequently submitted by interested parties.

Pursuant to the Department's solicitation of scope comments in the *Initiation Notice,* interested parties in this and the concurrent structural steel beams investigations request that the following products be excluded from the scope of the investigations: (1) beams of grade A913/65 and (2) forklift mast profiles.

With respect to the scope-exclusion requests for the A913/65 beam and forklift mast profiles, the interested parties rely upon 19 CFR 351.225(k)(2) and reason that, in general, these products differ from the structural steel beams covered by the scope of the investigations in terms of physical characteristics, ultimate uses, purchaser expectations, channels of trade, manner of advertising and display and/or price. They also argue that these products are not produced by the petitioners.

In considering whether these products should be included within the scope of the investigations, we analyzed the arguments submitted by all of the interested parties in the context of the criteria enumerated in the court decision *Diversified Products Corp.* v. *United States,* 572 F. Supp. 883, 889 (CIT 1983) (*''Diversified''*). For these analyses, we relied upon the petition, the submissions by all interested parties, the International Trade Commission's (''ITC'') preliminary determination, and other information.

After considering the respondent's comments and the petitioners' objections to the exclusion requests regarding the A913/65 beam, we find that the description of this grade of structural steel beam is dispositive such that further consideration of the criteria provided in their submissions is unnecessary. Furthermore, the description of the merchandise contained in the relevant submissions pertaining to this grade of beam does not preclude this product from being within the scope of the investigations. Accordingly, we preliminarily determine that the A913/65 beam does not constitute a separate class or kind of merchandise and, therefore, falls within the scope as defined in the petition.

With respect to forklift mast profiles, having considered the comments we received from the interested parties and the criteria enumerated in *Diversified,* we find that the profiles in question, being doubly-symmetric and having an I-shape, fall within the scope of the investigations. These profiles also meet the other criteria included in the scope language contained in the petition. While the description by the interested party requesting the exclusion indicates some differences, such as in price, between forklift mast profiles and structural steel beams, these differences are not sufficient to recognize forklift mast profiles as a separate class or kind of merchandise. However, given these differences between forklift mast profiles and structural steel beams, we preliminarily determine that forklift mast profiles should be separately identified for model-matching purposes.

We also received a scope-exclusion request by an interested party for fabricated steel beams. This request was subsequently withdrawn pursuant to an agreement with the petitioners to clarify the scope language by adding that ''* * * beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings are outside the scope definition.'' However, ''* * * if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.'' Accordingly, we modified the scope definition to account for this clarification. *See* the ''Scope'' section above.

We have addressed these scope-exclusion requests in detail in a Memorandum to Louis Apple and Laurie Parkhill, Directors, AD/CVD Enforcement Group I, Offices 2 and 3, respectively, from The Structural Steel Beams Teams Re: Scope Exclusion Requests, dated December 19, 2001.

Period of Investigation

The POI is October 1, 2000, through March 31, 2001.

Non-Market-Economy Country Status

The Department has treated the PRC as a non-market-economy (''NME'') country in all past antidumping investigations (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China,* 65 FR 19873 (April 13, 2000)). A designation as an NME remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act). The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily

determined to continue to treat the PRC as an NME country.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (''NV'') on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below. Furthermore, no interested party has requested that we treat the structural steel beams industry in the PRC as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have preliminarily continued to treat the PRC as an NME.

Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Maanshan has provided the requested company-specific separate-rates information and has indicated that there is no element of government ownership or control. Based on Maanshan's claim, we considered whether it is eligible for a separate rate.

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (Mar. 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the NME respondents can demonstrate the absence of both de jure and de facto governmental control over export activities. *See Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22545 (May 8, 1998).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Manshaan has placed on the record a number of documents to demonstrate absence of de jure control, including the ''Foreign Trade Law of the People's Republic of China'' and the ''Company Law of the People's Republic of China.'' In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide.* Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Maanshan asserted the following: (1) There is no government participation in setting export prices; (2) its managers have authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection, and (4) there are no restrictions on the use of its export revenue and it is responsible for financing it own losses. Additionally, Maanshan's questionnaire response does not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Maanshan's questionnaire response reveals no other information indicating government control.

The petitioners in this case argue that, because Maanshan is 63 percent owned by a holding company which is, in turn, wholly owned by the Anhui provincial government, and because certain managers of the holding company also serve on the board of directors of Maanshan, the respondent is ineligible for a separate rate due to potential government control. However, the petitioners have not submitted any specific evidence indicating that the conditions for de facto control exist. As stated in the *Silicon Carbide,* 59 FR at 22587, ownership of the company by a state-owned enterprise does not require the application of a single rate. Therefore, based on the information provided, we preliminarily determine that there is an absence of de facto governmental control of Maanshan's export functions. Consequently, we preliminarily determine that the respondent has met the criteria for the application of a separate rate.

The PRC-Wide Rate

In NME cases, it is the Department's policy to make a rebuttal presumption that all exporters located in the NME comprise a single exporter under common control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate. All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received timely Section A responses from Maanshan. Our review of U.S. import statistics, however, reveals that Maanshan did not account for all imports of subject merchandise into the United States from

the PRC. For this reason, we preliminarily determine that some PRC exporters of structural steel beams failed to respond to our questionnaire. Consequently, we are applying adverse facts available (see below) to determine the single antidumping rate—the PRC-wide rate-applicable to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from Maanshan.

Use of Facts Otherwise Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997).

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. However, section 776(c) provides that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

In the case of the single Chinese enterprise, as explained above, some exporters of the subject merchandise failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the PRC-wide rate because certain entities did not respond. Also, the complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability. Therefore, pursuant to section 776(b) of the Act, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

In selecting from among the facts otherwise available and using an adverse inference, we reviewed the information provided in the petition and in the response submitted by Maanshan. For export price, the petition contained price quotations which the petitioners obtained from a PRC producer of subject merchandise. We corroborated the petitioners' price quotations with data submitted by Maanshan in its questionnaire response. The price quotations fell within the range of export prices reported by Maanshan and are therefore reliable and relevant.

For normal value, we attempted to corroborate the petitioners' factors-of-production data. However, due to different reporting formats and factor groupings by the petitioners and the respondent, we were unable to reconcile the two sets of factors of production for corroboration purposes. Therefore, as facts available we preliminarily used the factors of production reported by Maanshan and applied the valuations which we used to calculate normal value for Maanshan. Using this data we calculated an all-PRC rate of 177.21 percent. *See* the Facts-Available Decision Memo dated December 19, 2001, in Central Records for a comprehensive explanation of how we corroborated this rate.

Fair Value Comparisons

To determine whether sales of structural steel beams to the United States by Maanshan were made at less than fair value, we compared export price to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average export prices. We calculated weighted-average NVs.

Export Price

In accordance with section 772(a) of the Act, we used export price (''EP'') because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NVs. We calculated EP based on prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight and brokerage and handling, were provided by NME companies, we valued those

charges based on surrogate rates from India. *See* the Factors-of-Production Valuation Memorandum, dated December 19, 2001 (''FOP Memorandum'').

Normal Value

1. Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka and the Philippines are countries comparable to the PRC in terms of economic development. *See* Memorandum from Jeffrey May to Laurie Parkhill, dated August 31, 2001. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. For PRC cases, the primary surrogate has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. We used India as the primary surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producer's factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. *See* FOP Memorandum. In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of this preliminary determination.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production, reported by respondent, for materials, energy, labor, by-products, and packing. We valued all the input factors using publicly available published information, as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice. In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market-economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *See* also *Lasko Metal Products v. United States,* 437 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (''*Lasko*''). Therefore, where Maanshan had market-economy inputs and paid for these inputs in a market-economy currency, we used the actual prices paid for those inputs in our calculations.

3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for respondents, *see* FOP Memorandum.

Citing *Sebacic Acid from the People's Republic of China, Final Results of Antidumping Duty Administrative Review,* 62 FR 65678 (December 15, 1997), Maanshan argued in its October 9, 2001, surrogate-value submission that the Department should make deductions from domestic prices to ensure that they are exclusive of India's central sales tax, any state sales tax, and any government-imposed statutory levies. However, there were no instances in which we had to use surrogate values that included such taxes or levies.

We added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision in *Sigma Corporation* v. *United States,* 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997).

For those Indian Rupee values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics* for India. For those U.S. dollar-denominated values not contemporaneous with the POI, we adjusted for inflation using producer price indices published in the International Monetary Fund's *International Financial Statistics* for the United States.

Except as noted below, we valued raw-material inputs using the weighted-average unit import values derived from the *Monthly Trade Statistics of Foreign Trade of India*—Volume II—Imports (''Indian Import Statistics'') for the time period April 2000, through February 2001. Where POI-specific Indian Import Statistics were not available, we used Indian Import Statistics from an earlier period (*i.e.,* April 1, 1999, through March 31, 2000). Although surrogate-value data or sources to obtain such data were provided by the respondent or the petitioners, in some cases we found that the Indian Import Statistics provided more contemporaneous data.

Maanshan argued that, since it generated its own electricity and produced other energy material inputs during the POI (argon, nitrogen and oxygen) in sufficient quantities to cover its needs in the manufacture of the subject merchandise during the POR, the Department should value these inputs using factors of production for items used by Maanshan in the production of these inputs. The petitioners argued that the Department should reject Maanshan's claim because the Department would have to calculate a number of additional factors to evaluate each upstream factor of production used in subject merchandise correctly. Consistent with our approach in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China,* 66 FR 49632 (September 28, 2001), we valued the respondent's inputs through the use of surrogate valuation, rather than based on surrogate valuation of the factors going into the production of those inputs. The respondent's methodology would add needless complications to our calculation of NV and lead to potentially erroneous results. Therefore, as the basis for valuing electricity, we have relied on the 1997 data published in the International Energy Agency's publication, *Energy Prices and Taxes,*

Third Quarter, 2000, and adjusted the amount for inflation. As the basis for valuing argon, nitrogen, and oxygen, we have relied on 1999 data from *UN Trade Commodity Statistics (UNTCS),* United Nations. We also valued bentonite and coal tar using the data from the UNTCS.

Furthermore, we used a website (www.indiainfoline.com) providing market prices for natural gas in 2000 to calculate a percentage of Maanshan-produced gas to natural gas and derive a surrogate value for gas. We valued water based on data from the Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (published in 1997).

Maanshan purchased iron ore from market-economy suppliers during the POI, one of which was an affiliate. We compared the price paid to the affiliated supplier with the prices paid to the unaffiliated market-economy suppliers and found that the price from the affiliated supplier was within the same range as those from the unaffiliated market-economy suppliers. Therefore, we used the weighted-average price reported by Maanshan.

The only input Maanshan reported for packing was steel strap. We used Indian Import Statistics data for the POI to value this input.

To value truck rates, we used freight costs based on price quotes obtained by the Department in November 1999 from trucking companies in India. For rail transportation, we valued rail rates using information published by the Indian Railway Conference Association in June 1998, as adjusted for inflation.

To value marine insurance and brokerage and handling we used a publicly summarized version of the average value for marine insurance expenses and brokerage and handling expenses reported in *Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Reviews,* 64 FR 856 (January 6, 1999).

To value factory overhead, and selling, general and administrative expenses and profit, we used rates based on financial information from an Indian integrated steel producer, Tata, a producer of subject merchandise whose March 2000 financial statement was provided by the petitioners in an October 9, 2001, submission.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate at the Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2000 *(see http://ia.ita.doc.gov/wages).* The source of the wage rate data on the Import Administration's web site is the 1999 Year Book of Labour Statistics, International Labor Organization (Geneva: 1999), Chapter 5B: Wages in Manufacturing.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percentage margin
Maanshan Iron & Steel Co., Ltd.	159.60
China-Wide	117.21

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: December 19, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–31981 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–838]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that structural steel beams from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act . In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department's'') regulations are to the regulations at 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan,* 66 FR 33048 (June 20, 2001)) (*Initiation Notice*), the following events have occurred.

On July 9, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of structural steel beams from Taiwan are materially injuring the United States industry (*see* ITC Investigation Nos. 731–TA–935–942 (Publication No. 3438)).

On July 26, 2001, we selected the two largest producers/exporters of structural steel beams from Taiwan as the mandatory respondents in this proceeding. For further discussion, see Memorandum to Susan H. Kuhbach, Senior Director Office 1, from The Team Re: Respondent Selection. We subsequently issued the antidumping questionnaire to Kuei Yi Industrial Co., Ltd. (''Kuei Yi'') and Tung Ho Steel Enterprise Corp. (''Tung Ho'') on July 26, 2001.

During the period August through November 2001, the Department received responses to sections A, B, C and D of the Department's original and supplemental questionnaires from Kuei Yi and Tung Ho.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (*See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 51639 (October 10, 2001)). On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (*See Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 56078 (November 6, 2001)).

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 30 and December 7, 2001, Tung Ho and Kuei Yi, respectively, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Kuei Yi and Tung Ho account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The scope of these investigations covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of these investigations unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of these investigations: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties*; *Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (*see* 66 FR 33048–33049). Interested parties submitted such comments by July 10, 2001. Additional comments were subsequently submitted by interested parties.

Pursuant to the Department's solicitation of scope comments in the *Initiation Notice*, interested parties in this and the concurrent structural steel beams investigations request that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles.

With respect to the scope-exclusion requests for the A913/65 beam and forklift mast profiles, the interested parties rely upon 19 CFR 351.225(k)(2) and reason that, in general, these products differ from the structural steel beams covered by the scope of the investigations in terms of physical characteristics, ultimate uses, purchaser expectations, channels of trade, manner

of advertising and display and/or price. They also argue that these products are not produced by the petitioners.

In considering whether these products should be included within the scope of the investigations, we analyzed the arguments submitted by all of the interested parties in the context of the criteria enumerated in the court decision *Diversified Products Corp.* v. *United States*, 572 F. Supp. 883, 889 (CIT 1983) (''*Diversified*''). For these analyses, we relied upon the petition, the submissions by all interested parties, the International Trade Commission's (''ITC'') preliminary determination, and other information.

After considering the respondent's comments and the petitioners' objections to the exclusion requests regarding the A913/65 beam, we find that the description of this grade of structural steel beam is dispositive such that further consideration of the criteria provided in their submissions is unnecessary. Furthermore, the description of the merchandise contained in the relevant submissions pertaining to this grade of beam does not preclude this product from being within the scope of the investigations. Accordingly, we preliminarily determine that the A913/65 beam does not constitute a separate class or kind of merchandise and, therefore, falls within the scope as defined in the petition.

With respect to forklift mast profiles, having considered the comments we received from the interested parties and the criteria enumerated in *Diversified*, we find that the profiles in question, being doubly-symmetric and having an I-shape, fall within the scope of the investigations. These profiles also meet the other criteria included in the scope language contained in the petition. While the description by the interested party requesting the exclusion indicates some differences, such as in price, between forklift mast profiles and structural steel beams, these differences are not sufficient to recognize forklift mast profiles as a separate class or kind of merchandise. However, given these differences between forklift mast profiles and structural steel beams, we preliminarily determine that forklift mast profiles should be separately identified for model-matching purposes.

We also received a scope-exclusion request by an interested party for fabricated steel beams. This request was subsequently withdrawn pursuant to an agreement with the petitioners to clarify the scope language by adding that ''* * * beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings are outside the scope definition.'' However, ''* * * if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.'' Accordingly, we modified the scope definition to account for this clarification. *See* the ''Scope'' section above.

We have addressed these scope-exclusion requests in detail in a Memorandum to Louis Apple and Laurie Parkhill, Directors, AD/CVD Enforcement Group I, Offices 2 and 3, respectively, from The Structural Steel Beams Teams Re: Scope Exclusion Requests, dated December 19, 2001.

Period of Investigation

The period of investigation (''POI'') is April 1, 2000, through March 31, 2001.

Fair Value Comparisons

To determine whether sales of structural steel beams from Taiwan to the United States were made at less than fair value (''LTFV''), we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: form; shape/size (section depth); strength/grade; and coating. We also excluded from our comparisons home market sales of structural steel beams manufactured by other producers in accordance with 771(16) of the Act.

With respect to home market sales of non-prime merchandise made by Tung Ho during the POI, in accordance with our past practice, we excluded these sales from our preliminary analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made to the United States during the POI. (*See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37180 (July 9, 1993).)

Export Price

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States, based on the facts of record. In this case, all sales to the U.S. were EP sales.

For both respondents, we based EP on the packed FOB price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses (freight from the plant to the port of exportation) and foreign brokerage and handling.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Kuei Yi's and Tung Ho's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because both respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of their aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Kuei Yi and Tung Ho.

B. Affiliated-Party Transactions and Arm's-Length Test

The Department's standard practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm's-length prices. Therefore, in accordance with that practice, we

performed an arm's-length test on Kuei Yi's and Tung Ho's sales to affiliates as follows.

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing expenses. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993).

In accordance with 19 CFR 351.403(d), where Kuei Yi's sales to its affiliates failed the arm's-length test, we used the sales made by the affiliates to unaffiliated customers in our analysis. For further discussion, see the Preliminary Determination Calculation Memorandum dated December 19, 2001 (*Calculation Memo*).

C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of structural steel beams in the home market were made at prices below their cost of production (''COP''). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice*, 66 FR at 33048, 33051).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP for each respondent based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (''G&A''), interest expenses, and home market packing costs (*see* ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses). We relied on the COP data submitted by Kuei Yi and Tung Ho, except as noted below.

We revised Kuei Yi's interest expense ratio to include interest expenses associated with loans covering asset losses incurred during the POI. *See Calculation Memo* for further details of these calculations.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time, in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether the below-cost sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Kuei Yi's and Tung Ho's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or constructed export price (''CEP''). Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[1] including selling functions[2], class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[3]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, Court Nos. 00–1058,–1060 (Fed. Cir. March 7, 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common structural steel beams selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from Kuei Yi and Tung Ho regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Kuei Yi and Tung Ho for each channel of distribution. Company-specific LOT findings are summarized below.

Kuei Yi

Kuei Yi reported sales in the home market through two channels of distribution: (1) Fabricators and end-users and (2) stockists. We examined the chain of distribution and the selling activities associated with home market sales through these channels of distribution, and determined that there was little difference in the relevant selling functions provided by Kuei Yi. Specifically, Kuei Yi does not provide inventory maintenance, advertising, or sales support for any of its home market customers. Kuei Yi does incur a high degree of sales activity related to transportation and warranty. Kuei Yi did not indicate that there are any differences with respect to freight and delivery between these channels of distribution or customer categories. Similarly, the sales warranty support provided by Kuei Yi does not vary by channel of distribution or customer category. Based on our overall analysis, we found that the channels of distribution did not differ significantly from each other with respect to selling activities and, therefore, constituted one LOT.

In the U.S. market, Kuei Yi made only EP sales through one channel of distribution: sales to traders shipped directly to the United States. Kuei Yi incurs freight costs in delivering the product to the port as well as brokerage and handling charges. Kuei Yi also provides warranty services in the U.S. market. Similar to the home market LOT, Kuei Yi does not provide inventory maintenance, advertising, or sales support in selling to its U.S. customers. Accordingly, there is only one LOT for U.S. sales.

We compared the EP LOT to the home market LOT and concluded that the selling functions performed for home market customers in this home market LOT are sufficiently similar to those performed for U.S. customers because the same services are offered in both markets. Accordingly, we consider the EP and home market LOTs to be the same. Consequently, we are comparing EP sales to sales at the same LOT in the home market.

Tung Ho

Tung Ho reported sales in the home market through two channels of distribution: (1) Unaffiliated distributors and (2) affiliated and unaffiliated end-users. Tung Ho sold the subject merchandise both out of inventory and on a made-to-order basis to both distributors and end-users. We examined the chain of distribution and the selling activities associated with home market sales through these channels of distribution, and determined that there was little difference in the relevant selling functions provided by Tung Ho. Specifically, Tung Ho provided rebates and warranties to distributors, but not to end-users. Tung Ho did not indicate that there are any differences with respect to freight and delivery or inventory maintenance services between these channels of distribution or customer categories. As we do not consider the existence of rebates and warranties on sales to distributors sufficient to warrant finding a separate channel of distribution for sales to distributors, we find that the home market channels of distribution do not differ significantly from each other with respect to selling activities and, therefore, constitute one LOT.

In the U.S. market, Tung Ho made only EP sales through one channel of distribution: sales to distributors shipped directly to the United States. Tung Ho incurs freight costs in delivering the product to the port as well as brokerage and handling charges. Tung Ho provided no rebates or warranty services in the U.S. market, nor did it provide inventory maintenance, advertising, or sales support in selling to its U.S. customers. Accordingly, there is only one LOT for U.S. sales.

We compared the EP LOT to the home market LOT and concluded that the selling functions performed for home market customers are sufficiently similar to those performed for U.S. customers to warrant considering them the same LOT. Consequently, we are comparing EP sales to sales at the same LOT in the home market.

F. Calculation of Normal Value Based on Comparison Market Prices

Kuei Yi

We calculated NV based on delivered or ex-works prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We made deductions, where appropriate, from the starting price for rebates. We also made deductions for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and warranties.

Tung Ho

We calculated NV based on delivered or ex-factory prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We added to the starting price interest revenue, where appropriate. We made deductions, where appropriate, from the starting price for billing adjustments and rebates. We also made deductions for inland freight, under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses, bank charges, and warranties. For those sales for which Tung Ho did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.,* December 19, 2001) in the calculation of imputed credit expenses.

Furthermore, for both respondents we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Kuei Yi Industrial Co., Ltd. ...	18.01
Tung Ho Steel Enterprise Corporation	4.70
All Others	13.95

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: December 19, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–31986 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–811]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Not Less Than Fair Value.

SUMMARY: We preliminarily determine that structural steel beams from Spain are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Gehr or Mike Strollo, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1779 or (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department's'') regulations are to 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan*, 66 FR 33048 (June 20, 2001)) (''*Initiation Notice*''), the following events have occurred.

On July 9, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of structural steel beams from Spain are materially injuring the United States industry (*see* ITC Investigation Nos. 731-TA–935–942 (Publication No. 3438)).

On July 18, 2001, we selected the largest producer/exporter of structural steel beams from Spain as the mandatory respondent in this proceeding. For further discussion, see Memorandum to Lou Apple, Director, Office 2, from The Team Re: Respondent Selection dated July 18, 2001. We subsequently issued the antidumping questionnaire to Aceralia Corporacion Siderurgica, S.A. (Aceralia) on July18, 2001.

During the period August through November 2001, the Department received responses to sections A, B, C and D of the Department's original and supplemental questionnaires from Aceralia. On December 18, 2001, we issued an additional supplemental questionnaire to the respondent.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (*See Notice of Postponement of Preliminary*

Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan, 66 FR 51639 (October 10, 2001).) On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (*See Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan*, 66 FR 56078 (November 6, 2001).)

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on December 18, 2001, the petitioners requested that, in the event of a negative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. In accordance with 19 CFR 351.210(b), because our preliminary determination is negative and no compelling reasons for denial exist, we are granting the petitioners' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties*; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (*see* 66 FR 33048–33049). Interested parties submitted such comments by July 10, 2001. Additional comments were subsequently submitted by interested parties.

Pursuant to the Department's solicitation of scope comments in the *Initiation Notice*, interested parties in this and the concurrent structural steel beams investigations request that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles.

With respect to the scope-exclusion requests for the A913/65 beam and forklift mast profiles, the interested parties rely upon 19 CFR 351.225(k)(2) and reason that, in general, these products differ from the structural steel beams covered by the scope of the investigations in terms of physical characteristics, ultimate uses, purchaser expectations, channels of trade, manner of advertising and display and/or price. They also argue that these products are not produced by the petitioners.

In considering whether these products should be included within the scope of the investigations, we analyzed the arguments submitted by all of the interested parties in the context of the criteria enumerated in the court decision *Diversified Products Corp. v. United States*, 572 F. Supp. 883, 889 (CIT 1983) (''*Diversified*''). For these analyses, we relied upon the petition, the submissions by all interested parties, the International Trade Commission's (''ITC'') preliminary determination, and other information.

After considering the respondent's comments and the petitioners' objections to the exclusion requests regarding the A913/65 beam, we find that the description of this grade of structural steel beam is dispositive such that further consideration of the criteria provided in their submissions is unnecessary. Furthermore, the description of the merchandise contained in the relevant submissions pertaining to this grade of beam does not preclude this product from being within the scope of the investigations. Accordingly, we preliminarily determine that the A913/65 beam does not constitute a separate class or kind of merchandise and, therefore, falls within the scope as defined in the petition.

With respect to forklift mast profiles, having considered the comments we received from the interested parties and the criteria enumerated in *Diversified,* we find that the profiles in question, being doubly-symmetric and having an I-shape, fall within the scope of the investigations. These profiles also meet the other criteria included in the scope language contained in the petition. While the description by the interested party requesting the exclusion indicates some differences, such as in price, between forklift mast profiles and structural steel beams, these differences are not sufficient to recognize forklift mast profiles as a separate class or kind of merchandise. However, given these differences between forklift mast profiles and structural steel beams, we preliminarily determine that forklift mast profiles should be separately identified for model-matching purposes.

We also received a scope-exclusion request by an interested party for fabricated steel beams. This request was subsequently withdrawn pursuant to an agreement with the petitioners to clarify the scope language by adding that ''* * * beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings are outside the scope definition.'' However, ''* * * if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.'' Accordingly, we modified the scope definition to account for this clarification. *See* the ''Scope'' section above.

We have addressed these scope-exclusion requests in detail in a Memorandum to Louis Apple and Laurie Parkhill, Directors, AD/CVD Enforcement Group I, Offices 2 and 3, respectively, from The Structural Steel Beams Teams Re: Scope Exclusion Requests, dated December 19, 2001.

Period of Investigation

The period of investigation (''POI'') is April 1, 2000, through March 31, 2001.

Fair Value Comparisons

To determine whether sales of structural steel beams from Spain to the United States were made at less than fair value (''LTFV''), we compared the export price (''EP'') or constructed export price (''CEP'') to the normal value (''NV''), as described in the ''Export Price,'' ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: form; shape/size (section depth); strength/grade; and coating.

With respect to home market sales of non-prime merchandise made by Aceralia during the POI, in accordance with our past practice, we excluded these sales from our preliminary analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made to the United States during the POI. (*See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea,* 58 FR 37176, 37180 (July 9, 1993).) In addition, we excluded from our preliminary analysis all home market sales between Aceralia's mills because these sales were made for internal consumption. (For further discussion, see Memorandum to the file from Jennifer Gehr Re: Calculations Performed for Aceralia Corporacion Siderurgica, S.A. (Aceralia) for the Preliminary Determination in the Less Than Fair Value Investigation on Structural Steel Beams from Spain dated December 19, 2001 (''Sales Calculation Memorandum'').)

Export Price

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on the packed price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight and foreign brokerage and handling.

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We based CEP on the packed prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for price-billing errors. We made deductions for rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (freight from port to warehouse) and U.S. storage expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* imputed credit costs) and indirect selling expenses.

Aceralia did not report rebates on certain sales made during the POI. Because the terms of the rebate agreement provide for the payment of rebates on these sales, we based the per-unit rebate expense for them on the amount reported for other sales to the same customers. In addition, Aceralia reported rebates, as well as certain movement expenses, on a theoretical-weight basis. We adjusted these expenses to state them on an actual-weight basis. (*See* the Sales Calculation Memorandum.)

For those U.S. sales which Aceralia did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.,* December 19, 2001) in the calculation of imputed credit expenses. In addition, we restated the respondent's U.S. interest rate on a 365-day basis (rather than a 360-day basis as reported). (*See* the Sales Calculation Memorandum.)

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Aceralia and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Affiliated-Party Transactions and Arm's-Length Test

The Department's standard practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are made at arm's-length prices. Therefore, in accordance with that practice, we

performed an arm's-length test on Aceralia's sales to affiliates as follows.

To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of the foreign like product, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. Where, for the tested models of the foreign like product, prices to the affiliated party were on average lower than 99.5 percent of the price to the unaffiliated parties, we determined that sales made to the affiliated party were not at arm's length. *See* 19 CFR 351.403(c). *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993).

In accordance with 19 CFR 351.403(d), where the respondent's sales to its affiliates constituted at least five percent of the total home market sales, and these sales failed the arm's-length test, our normal practice would be to use sales made by the affiliates to unaffiliated customers in our analysis. In this case, however, we were unable to do so because Aceralia either: (1) Was unable to provide this information; (2) failed to provide it in response to a specific request; or (3) reported information that was so incomplete that it could not be used for the preliminary determination. Consequently, we disregarded the first category of sales (i.e., those for which Aceralia was unable to provide the downstream information) and, we included the latter two categories in our analysis using adverse facts available.

Regarding the first scenario, Aceralia was unable to report downstream sales data for one customer group that became unaffiliated during the POI. In its November 9, 2001, supplemental questionnaire response, Aceralia demonstrated that: (1) it made numerous attempts to obtain the information from this customer after it became unaffiliated; and (2) the customer refused to provide the relevant data. Based on this information, we have accepted Aceralia's claim, for purposes of the preliminary determination that, even acting to the best of its ability, it could not provide the requested information. For the preliminary determination, we have excluded sales to this customer group from our analysis, because we found that they were not made at arm's-length. For further discussion, see the Sales Calculation Memorandum.

Regarding the latter two scenarios, Aceralia did not report necessary information requested by the Department in its supplemental questionnaire. Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[1] Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this case, we find that Aceralia withheld downstream information requested by the Department for certain sales and failed to provide complete and usable information on others. Because: (1) We informed Aceralia of the deficiency in its data and provided it an opportunity to remedy it in a supplemental questionnaire (pursuant to section 782(d) of the Act); and (2) Aceralia did not provide the information requested or provide information that was so incomplete that it could not be used (within the meaning of section 782(e) of the Act), we resorted to facts otherwise available. Further, the data that Aceralia claimed it was unable to provide for these transactions was provided for numerous other transactions. Aceralia did not indicate or explain why it was not possible to provide this information for the transactions in question. Therefore, we conclude that Aceralia could have provided the necessary data but chose not to, thereby failing to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, we adjusted the prices charged by Aceralia to the affiliated customers in question using adverse facts available. Specifically, we increased the prices charged to these customers by the largest customer-specific ratio calculated in the arm's length test (*i.e.,* the largest average price difference between the prices charged to any affiliated customer and unaffiliated customers). For further discussion of our application of facts available for the preliminary determination, see the Sales Calculation Memorandum.

On December 18, 2001, we issued an additional supplemental questionnaire to Aceralia on this topic. We intend to verify Aceralia's response to this questionnaire and will consider this information, as appropriate, for purposes of the final determination.

C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of structural steel beams in the home market were made at prices below their cost of production (''COP''). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice*, 66 FR at 33048, 33051).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (''G&A''), interest expenses, and home market packing costs (*see* ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses). We relied on the COP data submitted by Aceralia, except as noted below.

1. We revised the G&A rate to include net foreign exchange losses on accounts payable for the Gijon plant. In addition, we excluded packing expenses from the cost of goods sold denominator of the four individual plant rate calculations.

[1] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

2. We revised the denominator in the consolidated financial expense rate calculation to include only those offsets for interest income related to allowable short-term interest bearing items. We recalculated the denominator to be based on cost of goods sold rather than raw materials and also to exclude packing expenses.

3. We weight-averaged the revised COP/CV files for the four plants.

See Memorandum from Gina K. Lee to Neal M. Halper, Director, Office of Accounting, dated December 19, 2001, Re: Cost of Production and Constructed Value Calculation Adjustments for Preliminary Determination (''Cost Calculation Memorandum'').

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. Regarding home market movement charges, without explanation, Aceralia did not report certain extra freight charges on sales to the Canary Islands, despite our request that it do so.

See Aceralia's November 8, 2001, submission at pages 15 and 16. As adverse facts available, we increased the freight expenses on these sales by the largest additional charge shown on Aceralia's agreement with its freight provider. (*See* the Sales Calculation Memorandum.)

In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Aceralia's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[2] including selling functions,[3] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices[4]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* Court Nos. 00–1058,–1060 (Fed. Cir. March 7, 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We obtained information from Aceralia regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. Because Aceralia claimed business proprietary treatment for this information, we are unable to discuss it here. For a description of these selling functions, see the Sales Calculation Memorandum.

Aceralia reported home market sales through one channel of distribution: direct sales to both affiliated and unaffiliated distributors. As noted in the ''Affiliated Party Transactions and Arm's Length Test'' section of this notice, we based our preliminary analysis on Aceralia's direct sales (without considering any downstream information). In making our level of trade determination for these sales in the home market, we relied upon the information submitted in Aceralia's section A and supplemental section A responses. Based on our analysis of this business proprietary information, we find that only one level of trade exists

[2] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common structural steel beams selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services, where applicable.

[4] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

in the home market. *See* the Sales Calculation Memorandum.

In the U.S. market, Aceralia reported both EP and CEP sales. In its section A response, Aceralia stated that it made EP sales to the United States through Aristrain Hispano Trade Handelsgesellschaft (''AHT''), an affiliated trading company, for which the distribution process was analogous to Aceralia's CEP sales through TradeARBED, Inc. (''TradeARBED''). Because Aceralia did not report information on the selling functions performed by it in connection with AHT's sales to the first unaffiliated customer, we have insufficient information on the record to make a determination on the EP LOT. Nonetheless, given that we have only one LOT in the home market, it is not possible to make a LOT adjustment for EP sales. We have requested additional information on the selling functions/services provided to AHT and by AHT to its ultimate customer; we will re-examine this issue for purposes of the final determination in the event that we find multiple levels of trade in the home market at that time.

Regarding CEP sales, the relevant transaction for U.S. sales, after CEP adjustments are made, is between Aceralia and its affiliated distributor, TradeARBED. Based on the differences in the number and degree to which selling functions are performed in each market, we found the CEP LOT to be different from the home market LOT and to be at a less advanced stage of distribution than the home market LOT. (Because Aceralia claimed business proprietary treatment for this information, we are unable to discuss our analysis here. *See* the Sales Calculation Memorandum.) Consequently, we could not match to sales at the same LOT in the home market, nor could we determine a LOT adjustment based on Aceralia's home market sales. Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment.

Based on the selling functions provided by Aceralia for its sales to the United States, after CEP adjustments are made, we find that these sales are at a marketing stage which is less advanced than for Aceralia's home market sales. In addition, the data available do not permit us to determine the extent to which this difference in LOT affects price comparability. Therefore, in accordance with 19 CFR 351.412(f), we are granting Aceralia a CEP offset.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers, affiliated customers that we determined to be at arm's-length, or certain affiliated customers not determined to be at arm's-length (adjusted as noted in the ''Affiliated Party Transactions and Arm's Length Test'' section, above). We made deductions, where appropriate, from the starting price for billing adjustments, discounts and rebates. We also made deductions for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. We increased freight expenses to the Canary Islands, as noted in the ''Test of Home Market Sales Prices'' section, above.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for commissions. Because Aceralia reported commissions on a theoretical-weight basis, we restated these expenses to an actual-weight basis. In addition, we recalculated the commission expenses associated with certain sales in order to assign these expenses to the transactions on which they were incurred. Finally, we disallowed an adjustment for imputed credit expenses because Aceralia's payment data contained numerous inconsistencies. (*See* the Sales Calculation Memorandum.)

In accordance with 19 CFR 351.410(e), we offset the commission incurred in the U.S. market with the indirect selling expenses incurred in the home market by the lesser of the commission or the indirect selling expenses. We reclassified technical service expense incurred in the home market as indirect selling expenses because they are not directly associated with individual sales. In addition, we recalculated these expenses as a single percentage of gross unit price because Aceralia did not explain how the expenses differed by mill. (*See* the Sales Calculation Memorandum.)

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

Exporter/manufacturer	Weighted-average margin Percentage
Aceralia Corporacion Siderurgica, S.A.	1.21

Because the estimated weighted-average dumping margin for the examined company is *de minimis*, we are not directing the Customs Service to suspend liquidation of entries of structural steel beams from Spain.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(3) of the Act, the ITC will determine within 75 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a

request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: December 19, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–31987 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–811]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that structural steel beams from South Africa are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4033.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department's'') regulations are to the regulations at 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan,* 66 FR 33048 (June 20, 2001)) (*''Initiation Notice''*), the following events have occurred.

On July 9, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of structural steel beams from South Africa are materially injuring the United States industry (*see Certain Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan* (66 FR 37050 (July 16, 2001)).

On July 20, 2001, we selected the largest producer/exporter of structural steel beams from South Africa as a mandatory respondent in this proceeding. For further discussion, see Memorandum to Laurie Parkhill, Director Office 3, from The Team Re: Respondent Selection dated July 20, 2001. We subsequently issued the antidumping questionnaire to Highveld Steel and Vanadium Corporation, Ltd. (''Highveld''), on July 20, 2001.

During the period August through November 2001, the Department received responses to sections A, B, C, and D of the Department's original and supplemental questionnaires from Highveld.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (*See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 51639 (October 10, 2001).) On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (*See Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan* (66 FR 56078 (November 6, 2001).)

On October 3, 2001, the petitioners requested that the Department initiate a sales-below-cost investigation with respect to Highveld. We initiated such an investigation on October 29, 2001. (*See* Memorandum to Richard W. Moreland from Laurie Parkhill Re: Initiation of Cost Investigation, dated October 29, 2001, for further details.)

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on December 14, 2001, Highveld requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b)(2)(ii), because (1) Our preliminary determination is affirmative, (2) Highveld accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed

or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (see *Antidumping Duties;* Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (see 66 FR 33048–33049). Interested parties submitted such comments by July 10, 2001. Additional comments were subsequently submitted by interested parties.

Pursuant to the Department's solicitation of scope comments in the *Initiation Notice,* interested parties in this and the concurrent structural steel beams investigations request that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles.

With respect to the scope-exclusion requests for the A913/65 beam and forklift mast profiles, the interested parties rely upon 19 CFR 351.225(k)(2) and reason that, in general, these products differ from the structural steel beams covered by the scope of the investigations in terms of physical characteristics, ultimate uses, purchaser expectations, channels of trade, manner of advertising and display and/or price. They also argue that these products are not produced by the petitioners.

In considering whether these products should be included within the scope of the investigations, we analyzed the arguments submitted by all of the interested parties in the context of the criteria enumerated in the court decision *Diversified Products Corp.* v. *United States,* 572 F. Supp. 883, 889 (CIT 1983) (*''Diversified''*). For these analyses, we relied upon the petition, the submissions by all interested parties, the International Trade Commission's (''ITC'') preliminary determination, and other information.

After considering the respondent's comments and the petitioners' objections to the exclusion requests regarding the A913/65 beam, we find that the description of this grade of structural steel beam is dispositive such that further consideration of the criteria provided in their submissions is unnecessary. Furthermore, the description of the merchandise contained in the relevant submissions pertaining to this grade of beam does not preclude this product from being within the scope of the investigations. Accordingly, we preliminarily determine that the A913/65 beam does not constitute a separate class or kind of merchandise and, therefore, falls within the scope as defined in the petition.

With respect to forklift mast profiles, having considered the comments we received from the interested parties and the criteria enumerated in *Diversified,* we find that the profiles in question, being doubly-symmetric and having an I-shape, fall within the scope of the investigations. These profiles also meet the other criteria included in the scope language contained in the petition. While the description by the interested party requesting the exclusion indicates some differences, such as in price, between forklift mast profiles and structural steel beams, these differences are not sufficient to recognize forklift mast profiles as a separate class or kind of merchandise. However, given these differences between forklift mast profiles and structural steel beams, we preliminarily determine that forklift mast profiles should be separately identified for model-matching purposes.

We also received a scope-exclusion request by an interested party for fabricated steel beams. This request was subsequently withdrawn pursuant to an agreement with the petitioners to clarify the scope language by adding that ''* * * beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings are outside the scope definition.'' However, ''* * * if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.'' Accordingly, we modified the scope definition to account for this clarification. *See* the ''Scope'' section above.

We have addressed these scope-exclusion requests in detail in a Memorandum to Louis Apple and Laurie Parkhill, Directors, AD/CVD Enforcement Group I, Offices 2 and 3, respectively, from The Structural Steel Beams Teams Re: Scope Exclusion Requests, dated December 19, 2001.

Period of Investigation

The period of investigation (''POI'') is April 1, 2000, through March 31, 2001.

Fair Value Comparisons

To determine whether sales of structural steel beams from South Africa to the United States were made at less than fair value (''LTFV''), we compared the export price (''EP'') or constructed export price (''CEP'') to the normal value (''NV''), as described in the ''Export Price,'' ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the Highveld in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar

foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: form; shape/size (section depth); strength/grade; and coating.

With respect to home-market sales of non-prime merchandise made by Highveld during the POI, in accordance with our past practice, we excluded these sales from our preliminary analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made to the United States during the POI. (*See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea,* 58 FR 37176, 37180 (July 9, 1993).)

Export Price

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States, based on the facts of record. We based EP on the packed delivered price to unaffiliated purchasers in the United States. We made deductions, where appropriate, for inland freight expense from plant/warehouse to port of exit in accordance with section 772(c)(2)(A) of the Act. See Antidumping Duty Investigation on Structural Steel Beams from South Africa—Preliminary Determination Analysis Memorandum for Highveld Steel and Vanadium Corporation, Ltd., from J. David Dirstine to File, dated December 19, 2001 (Preliminary Analysis Memorandum).

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We based CEP on the packed FOB or CIF prices to unaffiliated purchasers in the United States. We made adjustments for price-billing errors. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, domestic inland freight (*i.e.,* inland freight expense from plant/warehouse to port of exit), ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. wharfage fees, U.S. survey fees, U.S. truck loading fees, U.S. inland freight expenses (*i.e.,* freight from port to warehouse), and warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*e.g.,* imputed credit costs) and indirect selling expenses (*e.g.,* inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Highveld and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales. See Preliminary Analysis Memorandum.

Normal Value

A. Home-Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home-market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.405(b)(2). Because the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Cost-of-Production Analysis

Based on our analysis of a sales-below-cost allegation submitted by the petitioners on October 3, 2001, we found that there were reasonable grounds to believe or suspect that sales of structural steel beams in the home market were made at prices below their cost of production (''COP''). Accordingly, pursuant to section 773(b) of the Act, we initiated an investigation of sales-below-cost for Highveld to determine whether sales were made at prices below their respective COP (*see Initiation Notice,* 66 FR at 33048, 33051, and Memorandum to Richard W. Moreland from Laurie Parkhill Re: Initiation of Cost Investigation, dated October 29, 2001, for further details).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (''G&A''), and interest expenses (*see* ''Test of Home Market Sales Prices'' section below for treatment of home-market selling expenses). We relied on the COP data submitted by Highveld and its parent company, Anglo American plc., except as noted below.

B. We revised Highveld's G&A rate calculation to exclude freight out and packing expenses from the denominator (cost of sales) of the calculation.

C. We revised Highveld's interest expense rate calculations to exclude freight out, packing expenses, interest expenses and G&A expenses from the denominator (cost of sales) of the calculation.

D. We excluded the vanadium slag offset (''VSLAG'') from the total cost of manufacture of each CONNUM.

See Memorandum from Laurens van Houten to Neal Halper, Director, Office of Accounting, dated December 19, 2001, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination (''Cost Calculation Memorandum'').

2. Test of Home Market-Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home-market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, rebates, discounts, direct and indirect selling expenses, and packing expenses. In determining whether to disregard home-market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and 773(b)(2)(C) of the Act, whether such sales were made (1) within an extended period of time, (2) in substantial quantities, and (3) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to sections 773(b)(1)(A) and 773(b)(2)(C) of the Act, where less than

20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with sections 773(b)(1)(A) and 773(b)(2)(B) and (C) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Highveld's home-market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison-market sales (*i.e.,* NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* Court Nos. 00–1058, –1060 (Fed. Cir. March 7, 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV level of trade is more remote from the factory than the CEP level of trade and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.,* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value:* Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

We obtained information from Highveld regarding the marketing stages involved in making the reported home-market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. Highveld's LOT findings are summarized below.

Highveld reported two channels of distribution in the home market. The selling activities associated with all sales were similar (*e.g.,* freight and delivery arrangements, plannings and rollings, and after-sales service) and, based on our analysis of the selling activities, we considered the two channels of distribution to constitute one LOT. Highveld reported two channels of distribution in the U.S. market, one represented by its EP sales and one represented by its CEP sales. Because the selling activities associated with the home-market LOT were similar to those associated with EP sales (*e.g.,* freight and delivery arrangements, plannings and rollings, and aftersale service), we made no LOT adjustment for EP sales. For CEP sales, after making deductions pursuant to section 772(d) of the Act, we found that the selling functions performed by Highveld at the CEP level (*e.g.,* aftersale service and technical advice) were sufficiently different from the selling functions performed at the home-market LOT (*e.g.,* planning of rollings, market research, advertising, and freight and delivery arrangements) to consider the home-market LOT to be different and at a more advanced stage of distribution than the CEP LOT. Because the sole home-market LOT was different from the CEP LOT, we could not match to sales at the same LOT in the home market, nor could we determine a LOT adjustment based on Highveld's home-market sales of merchandise under investigation. Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Accordingly, for Highveld's CEP sales we determined normal value at the sole home-market LOT and made a CEP-offset adjustment to NV in accordance with section 773(a)(7)(B) of the Act.

D. Calculation of Normal Value Based on Comparison-Market Prices

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for rebates. We also made deductions for movement expenses (*i.e.,* inland freight expense from plant/warehouse to customer) under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses.

We also deducted home-market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common structural steel beams selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-Average margin percentage
Highveld	7.22
All Others	7.22[1]

[1] As Highveld was the only respondent that we used in our calculations, we used Highveld's margin as the all-others rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to 735(b)(2) the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: December 19, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–31988 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–814]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value.

SUMMARY: We preliminarily determine that structural steel beams from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department's'') regulations are to the regulations at 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan,* 66 FR 33048 (June 20, 2001) (*Initiation Notice*)), the following events have occurred.

On July 9, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of structural steel beams from the Russian Federation are materially injuring the United States industry (see ITC Investigation Nos. 731–TA–935–942 (Publication No. 3438)).

We issued the antidumping questionnaire to Guryevsk Steel Works, Magnitogorsk Iron and Steel Works, and Nizhny Tagil Iron and Steel Works on July 18, 2001. We only received a questionnaire response from Nizhny Tagil Iron and Steel Works (Tagil).

During the period August through October 2001, the Department received responses to sections A, C, and D of the Department's original and supplemental questionnaires from Tagil.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made

a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (See *Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 51639 (October 10, 2001).) On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (See *Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 56078 (November 6, 2001)).

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on December 7, 2001, Tagil requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) Our preliminary determination is affirmative, (2) Tagil accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (see *Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (see 66 FR 33048–33049). Interested parties submitted such comments by July 10, 2001. Additional comments were subsequently submitted by interested parties.

Pursuant to the Department's solicitation of scope comments in the *Initiation Notice,* interested parties in this and the concurrent structural steel beams investigations request that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles.

With respect to the scope-exclusion requests for the A913/65 beam and forklift mast profiles, the interested parties rely upon 19 CFR 351.225(k)(2) and reason that, in general, these products differ from the structural steel beams covered by the scope of the investigations in terms of physical characteristics, ultimate uses, purchaser expectations, channels of trade, manner of advertising and display and/or price. They also argue that these products are not produced by the petitioners.

In considering whether these products should be included within the scope of the investigations, we analyzed the arguments submitted by all of the interested parties in the context of the criteria enumerated in the court decision *Diversified Products Corp.* v. *United States,* 572 F. Supp. 883, 889 (CIT 1983) (''*Diversified*''). For these analyses, we relied upon the petition, the submissions by all interested parties, the International Trade Commission's (''ITC'') preliminary determination, and other information.

After considering the respondent's comments and the petitioners' objections to the exclusion requests regarding the A913/65 beam, we find that the description of this grade of structural steel beam is dispositive such that further consideration of the criteria provided in their submissions is unnecessary. Furthermore, the description of the merchandise contained in the relevant submissions pertaining to this grade of beam does not preclude this product from being within the scope of the investigations. Accordingly, we preliminarily determine that the A913/65 beam does not constitute a separate class or kind of merchandise and, therefore, falls within the scope as defined in the petition.

With respect to forklift mast profiles, having considered the comments we received from the interested parties and the criteria enumerated in *Diversified,* we find that the profiles in question, being doubly-symmetric and having an I-shape, fall within the scope of the investigations. These profiles also meet the other criteria included in the scope language contained in the petition. While the description by the interested party requesting the exclusion indicates some differences, such as in price, between forklift mast profiles and structural steel beams, these differences are not sufficient to recognize forklift mast profiles as a separate class or kind of merchandise. However, given these differences between forklift mast profiles and structural steel beams, we preliminarily determine that forklift mast profiles should be separately identified for model-matching purposes.

We also received a scope-exclusion request by an interested party for fabricated steel beams. This request was subsequently withdrawn pursuant to an agreement with the petitioners to clarify the scope language by adding that

''* * * beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings are outside the scope definition.'' However, ''* * * if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.'' Accordingly, we modified the scope definition to account for this clarification. See the ''Scope'' section above.

We have addressed these scope-exclusion requests in detail in a Memorandum to Louis Apple and Laurie Parkhill, Directors, AD/CVD Enforcement Group I, Offices 2 and 3, respectively, from The Structural Steel Beams Teams Re: Scope Exclusion Requests, dated December 19, 2001.

Period of Investigation

The period of investigation (''POI'') is October 1, 2000, through March 31, 2001.

Non-Market Economy Country Status for the Russian Federation

The Department has treated the Russian Federation as a non-market-economy (''NME'') country in all past antidumping duty investigations and administrative reviews. See, *e.g., Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 Fr 49347 (September 27, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review,* 64 FR 1599 (Jan. 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 62 FR 61787 (Nov. 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation,* 60 FR 16440 (Mar. 30, 1995) *(Magnesium from Russia Original Investigation Final Determination).* A designation as a NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (''NV'') on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below.

No party in this investigation has requested a revocation of Russia's NME status. We have, therefore, preliminarily continued to treat Russia as an NME. However, we are currently evaluating Russia's NME status in another ongoing proceeding. See *Notice of Initiation of Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws,* 66 FR 54197 (October 26, 2001).

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Tagil has submitted separate-rates information in its section A responses, it has stated that there is no element of government ownership or control, and it has requested a separate, company-specific rate.

The Department's separate-rate test is unconcerned, in general, with macroeconomic/border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (Mar. 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the NME respondents can demonstrate the absence of both de jure and de facto governmental control over export activities. See *Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22545 (May 8, 1998).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Tagil has placed on the record a number of documents to demonstrate absence of de jure control, including: 1) the Federal Law on Joint Stock Companies (Dec. 26, 1995); 2) the Federal Law No. 158-FZ (Sept. 25, 1998); and 3) the Federal Act No. 3615–1 (October 9, 1992), ''Currency control and supervision'' (as amended through May 31, 2001).

In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 64 FR 61261, 61268 (Nov. 10, 1999); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation,* 65 FR 1139, 1142 (Jan. 7, 2000). We have no new information in this proceeding which would cause us to reconsider this determination.

According to Tagil, structural steel beam exports are not affected by export-licensing provisions or export quotas. Tagil claims to have autonomy in setting the contract prices for sales of pure magnesium through independent price negotiations with its foreign customers without interference from the Russian government. Based on the assertions of Tagil, we preliminarily determine that there is an absence of de jure government control over the pricing and marketing decisions of Tagil with respect to this company's structural steel beam export sales.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices

are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Tagil has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales and uses profits according to its business needs. Additionally, Tagil's questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that Tagil has met the criteria for the application of separate rates.

Russia-Wide Rate

In all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Tagil has preliminarily qualified for a separate rate. Furthermore, the information on the record of this investigation indicates that Tagil is the only Russian producer and/or exporter of the subject merchandise with sales or shipments to the United States during the POI. Based upon our examination and clarification of Customs data, we have determined that there are no other Russian producers and/or exporters of the subject merchandise and consequently none which were required to respond to our questionnaire. Because Tagil, the only known Russian producer of steel beams, responded to our questionnaire and the evidence indicates that there are no other Russian producers or exporters of subject merchandise during the POI, we have calculated a Russia-wide rate for this investigation based on the weighted-average margin we determined for Tagil. This Russia-wide rate applies to all entries of subject merchandise except for entries of subject merchandise exported by Tagil.

Fair Value Comparisons

To determine whether sales of structural steel beams from the Russian Federation to the United States were made at less than fair value (''LTFV''), we compared the constructed export price (''CEP'') to the NV calculated using an NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average CEPs to weighted-average NV.

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

In this case, we based CEP on the packed ex-warehouse, or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for price-billing errors. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling, international freight, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, U.S. inland freight expenses (i.e., freight from port to warehouse and freight from warehouse to the customer), truck loading expenses, U.S. barging expenses, and post-sale warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit costs), and indirect selling expenses (including inventory carrying costs).

In addition, pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. We calculated the CEP-profit ratio for Tagil using the financial data reflected on the income statement of a Turkish producer of steel. For further discussion of the financial statements of this surrogate producer, see the ''Normal Value'' section of this notice below.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market-economy countries that: (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that Poland, Venezuela, South Africa, Turkey, Colombia, and Tunisia are countries comparable to Russia in terms of overall economic development. See the August 9, 2001, memorandum from Jeffrey May, Director, Office of Policy to Laurie Parkhill, Office Director, Group 1, Office 3 (Policy Memorandum).

According to the available information on the record, we have determined that South Africa meets the statutory requirements for an appropriate surrogate country for Russia. For purposes of the preliminary determination, we have selected, except where noted, South Africa as the surrogate country, based on the quality and contemporaneity of the currently available data. Accordingly, we have calculated NV using South African values for the Russian producer's factors of production. We have obtained and relied upon publicly available information wherever possible.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Tagil for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available South African surrogate values.

For purposes of calculating NV, we valued Russian factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the ''Preliminary Determination Factors Valuation Memorandum from senior analyst to the File,'' dated December 19, 2001. In

accordance with this methodology, we valued the factors of production as follows.

In selecting the surrogate values, we considered the availability, quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to South African surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation* v. *United States,* 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). Where a producer did not report the distance between the material supplier and the factory, we used as facts available the longest distance reported (*i.e.,* the distance between the Russian seaport and the producer's location). To value rail freight rates, we used a rate for aluminum slabs or ingots provided by Spoornet, a South African rail company. As we were unable to identify a surrogate value for freight by truck, we valued trucking freight expenses using the surrogate value for rail freight. For those values not contemporaneous with the POI, we adjusted for inflation using producer price indices or wholesale price indices published in the International Monetary Fund's *International Financial Statistics.*

We valued the following inputs using the Commodity Trade Statistics Section of the United Nation's Harmonized System import data for South Africa: lime/limestone, iron from ore, iron pellets, coal, ferromanganese, and silicomanganese.

We valued the following inputs using the official South African import statistics obtained from the Trade Statistics data service: ferrosilicon, aluminum, magnesium powder, and silicocalcium.

We valued scrap using information based on import data from the *World Trade Atlas.*

In its October 9, 2001, submission, the respondent calculated a scrap value of $33.00 per metric ton based on imports of this input into South Africa. In its October 9, 2001, submission, the petitioners based scrap-value information on exports of steel scrap from South Africa to various market-economy countries.

The petitioners argue in their November 14, 2001, submission that the Department should refrain from using the respondent's scrap value because the per-unit value for scrap is aberrational. According to the petitioners, the figure used by the respondent represents only 1,525 metric tons of imports, which the petitioners argue is an extremely low volume of steel. See petitioners' November 14, 2001, submission at page 2. In contrast, the respondent argues in its October 19, 2001, submission that the Department's practice is to refrain from using export statistics as a basis for calculating surrogate values when other data are available.

We agree with the petitioners that the respondent's scrap value is aberrational because of the extreme low volume of steel imports to South Africa. We also agree with the respondent that our practice is to refrain from using export statistics as a basis for calculating surrogate values when other data are available. Therefore, because we cannot base the scrap value on imports of steel scrap to South Africa, we have determined that it is appropriate to seek information from other steel-producing countries. Specifically, we attempted to seek scrap-value information from the surrogate countries listed in the August 9, 2001, Policy Memorandum.

We examined whether countries listed on the Policy Memorandum such as Poland, Venezuela, Turkey, Colombia, and Tunisia produced structural steel beams. Based on the *Iron and Steel Works of the World,* 13th Edition, we found that Poland is the only country that produces steel beams. Therefore, we attempted to seek scrap-value information based on imports from this country. We were able to find scrap-value information based on imports from Poland. Specifically, we used data from the *World Trade Atlas* to value scrap. Therefore, because Poland is a market economy and is currently at a level of economic development comparable to Russia as demonstrated by its gross national product, we valued scrap using import statistics from Poland.

We valued both natural gas and heavy oil using data from the International Energy Agency. We valued electricity using the POI electricity rate charged to large industrial users by Eskom, a South African electric utility company.

We valued packing costs using the packing-cost factor presented by Highveld Steel and Vanadium Corporation Ltd. (''Highveld Steel'') in case A–791–811 in the September 12, 2001, public-version submission at exhibit B–3. Although this value is a ranged value, we find that it is the most indicative factor for packing expenses because Highveld Steel is the sole producer of steel beams in South Africa.

The packing-cost factor includes materials, labor, and transport services. Therefore, we did not use any packing material and packing labor amounts submitted by the respondent in our packing-cost calculation.

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

Based on the information submitted by Tagil, we have determined that slag, small coke, waste, and vanadium are by-products. Because they are by-products, we subtracted the sales revenue of slag, coke by-product, waste, and vanadium from the estimated production costs of structural steel beams. This treatment of by-products is consistent with generally accepted accounting principles. See *Cost Accounting: A Managerial Emphasis (1991)* at pages 539–544. We used a South African price quote to value slag, waste, and vanadium and the United Nation's Harmonized System data to value coke by-product.

With respect to the valuation of factory overhead, selling, general and administrative expenses (''SG&A''), and profit, we considered the information on the record submitted by both the petitioners and the respondent for this purpose.

In its October 9, 2001, submission, the petitioners provided a copy of the 2000 annual financial statement of Anglo American plc, the parent company of Highveld Steel, the only South African producer of structural steel beams. In its October 9, 2001, submission, the respondent provided a copy of the 2000 Annual Report of Highveld Steel.

In its October 19, 2001, submission, the respondent argues that the consolidated financial statements of Anglo American should not be used because they do not provide a reasonable basis for evaluating the experience of South African steel beams producers. According to the respondent, there are too many industries included within the Anglo American financial statements. Therefore, for these reasons, the respondent argues that the data in Anglo American's financial statements do not provide an appropriate basis to calculate surrogate ratios for overhead, SG&A, and profit as a reasonable estimate of the steel beam industry in South Africa.

In its November 14, 2001, submission, the petitioners argue that Highveld Steel's financial statement is not a suitable basis for calculating factory overhead, SG&A, and profit ratios because it does not separately identify all SG&A expenses from its cost of sales. According to the petitioners, the inability to separate out SG&A items from employees' remuneration and other cost of sales renders Highveld Steel's financial statement unusable for

purposes of calculating an SG&A ratio. Therefore, for these reasons, the petitioners argue that the Department should rely on Highveld Steel's parent company's financial statements as the basis for calculating factory overhead, SG&A, and profit ratios.

We agree with the respondent that the Anglo American financial statements would not provide a reasonable basis for calculating overhead, SG&A, and profit ratios because the data includes information from businesses and industries dissimilar to the experience of a South African steel beams producer. We also agree with the petitioners that we cannot rely on Highveld Steel's financial statements because it is unclear which elements of Highveld Steel's financial statement constitute SG&A costs. Therefore, since Highveld Steel is the only steel beam producer in South Africa, we have determined that it is appropriate to seek information from other steel-producing countries. Specifically, we attempted to seek financial information from the surrogate countries listed in the Policy Memorandum.

We examined whether countries listed in the memorandum such as Poland, Turkey, Venezuela, Colombia, and Tunisia produced structural steel beams. Based on the *Iron and Steel Works of the World*, 13th Edition, we found that Poland is the only country that produces steel beams. Specifically, we found that Huta Katowice SA is a steel beams producer in Poland. Therefore, we attempted to seek financial information from this company. We were unsuccessful, however, in finding any financial information from this company that would provide an appropriate basis for calculating factory overhead, SG&A, and profit ratios. Because we could not find any financial information concerning production in South Africa or Poland, we have determined that it is appropriate to seek financial information from a steel producer (a non-steel beams producer) in South Africa. Based on the *Iron and Steel Works of the World*, 13th Edition, we found that there are several steel producers in South Africa. We attempted to seek financial information from these steel companies and were unsuccessful in finding any financial information. We then examined whether we could find financial information from steel-producing companies in Poland. We were unsuccessful in finding any financial information from steel producing companies in Poland.

We then examined whether we could find financial information from steel-producing companies in Turkey that would provide the most appropriate base for valuing factory overhead, SG&A, and profit ratios. Based on the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled, Flat-Rolled, Carbon-Quality Steel Products From the Russian Federation*, 64 FR 9312–9318 (February 25, 1999) (*Hot-Rolled*), we found that, in that case, to value overhead, SG&A expenses, and profit ratios, we used public information reported in the 1997 financial statements of Eregli Demir ve Celik Fabrikalari TAS (''Erdemir''), a Turkish steel producer. Because Turkey is currently at a level of economic development comparable to the Russian Federation as demonstrated by its per-capita GNP and its national distribution of labor, we find it appropriate to use Turkey as a surrogate country to value factory overhead, SG&A, and profit. See Policy Memorandum. Therefore, for purposes of this preliminary determination, we have used this company's financial statements to calculate the factory overhead, SG&A, and profit ratios. However, we welcome interested parties to comment on our determination to use Turkey as a surrogate country and Erdemir's fiscal 1997 financial statements as the basis for calculating factory overhead, SG&A, and profit.

Currency Conversions

We made currency conversions, in accordance with section 773A(a) of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. The suspension-of-liquidation instruction will remain in effect until further notice. The weighted-average dumping margin is as follows:

Exporter/manufacturer	Weighted-average margin percentage
Tagil	165.00
Russia-Wide Rate	165.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: December 19, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–31989 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–810]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Luxembourg

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that structural steel beams from Luxembourg are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Margarita Panayi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department's'') regulations are to the regulations at 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan,* 66 FR 33048 (June 20, 2001)) (''*Initiation Notice*''), the following events have occurred.

On July 9, 2001, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of structural steel beams from Luxembourg are materially injuring the United States industry (*see* ITC Investigation Nos. 731–TA–935–942 (Publication No. 3438)).

On July 26, 2001, we selected the largest producer/exporter of structural steel beams from Luxembourg as the mandatory respondent in this proceeding. For further discussion, see Memorandum to Susan H. Kuhbach, Senior Director Office 1, from The Team Re: Respondent Selection dated July 26, 2001. We subsequently issued the antidumping questionnaire to ProfilARBED, S.A. (''ProfilARBED'') on July 26, 2001.

We received section A, B, and C questionnaire responses from ProfilARBED during August and September 2001. Based on our analysis of the responses, we determined that the Luxembourg home market was not viable and that sales to Germany, the largest third-country market, should be reported and used for calculating normal value (''NV''). Further, as the Department stated in the *Initiation Notice,* in the event German sales were to be used for NV, a sales-below-cost investigation would be initiated. Therefore, we also requested that ProfilARBED complete a section D questionnaire response (*see* October 10, 2001, supplemental questionnaire and ''Home Market Viability'' section below).

We issued and received responses to our supplemental questionnaires from October through December 2001.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (*See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 51639 (October 10, 2001).) On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (*See Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan,* 66 FR 56078 (November 6, 2001).)

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 21, 2001, ProfilARBED requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) ProfilARBED accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting ProfilARBED's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The scope of these investigations covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of these investigations unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of these investigations: (1) Structural steel beams

greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice (see* 66 FR 33048–33049). Interested parties submitted such comments by July 10, 2001. Additional comments were subsequently submitted by interested parties.

Pursuant to the Department's solicitation of scope comments in the *Initiation Notice*, interested parties in this and the concurrent structural steel beams investigations request that the following products be excluded from the scope of the investigations: (1) Beams of grade A913/65 and (2) forklift mast profiles.

With respect to the scope-exclusion requests for the A913/65 beam and forklift mast profiles, the interested parties rely upon 19 CFR 351.225(k)(2) and reason that, in general, these products differ from the structural steel beams covered by the scope of the investigations in terms of physical characteristics, ultimate uses, purchaser expectations, channels of trade, manner of advertising and display and/or price. They also argue that these products are not produced by the petitioners.

In considering whether these products should be included within the scope of the investigations, we analyzed the arguments submitted by all of the interested parties in the context of the criteria enumerated in the court decision *Diversified Products Corp.* v. *United States,* 572 F. Supp. 883, 889 (CIT 1983) (''*Diversified*''). For these analyses, we relied upon the petition, the submissions by all interested parties, the International Trade Commission's (''ITC'') preliminary determination, and other information.

After considering the respondent's comments and the petitioners' objections to the exclusion requests regarding the A913/65 beam, we find that the description of this grade of structural steel beam is dispositive such that further consideration of the criteria provided in their submissions is unnecessary. Furthermore, the description of the merchandise contained in the relevant submissions pertaining to this grade of beam does not preclude this product from being within the scope of the investigations. Accordingly, we preliminarily determine that the A913/65 beam does not constitute a separate class or kind of merchandise and, therefore, falls within the scope as defined in the petition.

With respect to forklift mast profiles, having considered the comments we received from the interested parties and the criteria enumerated in *Diversified*, we find that the profiles in question, being doubly-symmetric and having an I-shape, fall within the scope of the investigations. These profiles also meet the other criteria included in the scope language contained in the petition. While the description by the interested party requesting the exclusion indicates some differences, such as in price, between forklift mast profiles and structural steel beams, these differences are not sufficient to recognize forklift mast profiles as a separate class or kind of merchandise. However, given these differences between forklift mast profiles and structural steel beams, we preliminarily determine that forklift mast profiles should be separately identified for model-matching purposes.

We also received a scope-exclusion request by an interested party for fabricated steel beams. This request was subsequently withdrawn pursuant to an agreement with the petitioners to clarify the scope language by adding that ''* * * beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings are outside the scope definition.'' However, ''* * * if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.'' Accordingly, we modified the scope definition to account for this clarification. *See* the ''Scope'' section above.

We have addressed these scope-exclusion requests in detail in a Memorandum to Louis Apple and Laurie Parkhill, Directors, AD/CVD Enforcement Group I, Offices 2 and 3, respectively, from The Structural Steel Beams Teams Re: Scope Exclusion Requests, dated December 19, 2001.

Period of Investigation

The period of investigation (''POI'') is April 1, 2000, through March 31, 2001.

Fair Value Comparisons

To determine whether sales of structural steel beams from ProfilARBED to the United States were made at less than fair value (''LTFV''), we compared the constructed export price (''CEP'') to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by ProfilARBED in Germany during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third country, where appropriate. Where there were no sales of identical merchandise in the third country made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by ProfilARBED in the following order of importance: form; shape/size (section depth); strength/grade; and coating.

ProfilARBED reported different forms in the home market for beams that had ''special finishing'' and it reported different strength/grades in the home market for beams that had different notch-toughness requirements. ProfilARBED did not demonstrate that the hot-formed beams with ''special finishing'' should be distinguished from other hot-formed beams. Neither did ProfilARBED demonstrate that the

grades that had different notch-toughness requirements should be distinguished from other beams that had the same grade (but not the notch-toughness requirements). Therefore, we did not differentiate the forms either on the basis of ''special finishing'' or on the basis of notch toughness.

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, all U.S. sales of merchandise produced by ProfilARBED are made in the United States by TradeARBED Inc. (''TANY''), which is a seller affiliated with ProfilARBED.

We based CEP on the packed FOB or CIF prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for price-billing errors. We made deductions for rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (freight from port to warehouse) and U.S. storage expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit costs) and indirect selling expenses (including inventory carrying costs).

We recalculated ProfilARBED's indirect selling expenses incurred by its U.S. affiliate to reflect the expense rate for the POI rather than the fiscal year, based on the information provided in ProfilARBED's December 11, 2001, submission. ProfilARBED reported most U.S. sales data on a theoretical-weight basis. We adjusted these data to state them on an actual-weight basis.

For those U.S. sales which ProfilARBED did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.*, December 19, 2001) in the calculation of imputed credit expenses. In addition, we recalculated ProfilARBED's U.S. interest rate on a 365-day basis, rather than the 360-day basis reported, and recalculated the imputed interest expense accordingly. (*See* Memorandum entitled ''U.S. Imputed Interest Rate Recalculation'' dated December 19, 2001.)

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by ProfilARBED and its U.S. affiliate on their sales of the subject merchandise in the United States and the foreign like product in Germany and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared ProfilARBED's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

In this case, we determined that ProfilARBED's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Specifically, the vast majority of ProfilARBED's sales were made to an affiliated reseller whose inventory includes products from affiliated and unaffiliated suppliers in other countries, the origin of which cannot be readily identified. Because most of the sales to the affiliated reseller are eventually re-sold to non-Luxembourg customers, and those made to Luxembourg customers cannot be specifically identified as Luxembourg-produced merchandise, ProfilARBED's sales to the affiliated reseller cannot be relied upon for purposes of determining home market viability. Therefore, we used sales to the largest third country (''Germany'') as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404 (*see* the Department's October 10, 2001 supplemental questionnaire at pages 1–2).

B. Affiliated-Party Transactions and Arm's-Length Test

The Department's standard practice with respect to the use of third country sales to affiliated parties for NV is to determine whether such sales are at arm's-length prices. Therefore, in accordance with that practice, we performed an arm's-length test on ProfilARBED's sales to affiliates.

Sales to affiliated customers in the third country not made at arm's-length prices are excluded from our analysis because they are made outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

In accordance with 19 CFR 351.403(d), where the respondent's sales to its affiliates constituted at least five percent of the total home-market sales, and these sales failed the arm's-length test, we normally use the sales made by the affiliates to unaffiliated customers in our analysis. Accordingly, we requested ProfilARBED to report these resales.

As discussed in several of its submissions, particularly its October 1, 2001, and November 28, 2001, submissions, ProfilARBED claims that its record-keeping system used in the ordinary course of business does not permit ProfilARBED to track its downstream resales from the mill to the ultimate unaffiliated purchaser. According to ProfilARBED, the information is not recorded electronically and to track the information manually would be extremely burdensome and time-consuming.

For purpose of the preliminary determination, we have accepted ProfilARBED's claim that, even acting to the best of its ability, it could not provide the requested information for the large number of sales in question in

the time available. Therefore, for the preliminary determination, we have calculated NV based on the sales to unaffiliated customers and affiliated customers which passed the arm's length-test. We will examine ProfilARBED's claim during verification.

The petitioners submitted additional comments regarding this topic on December 12 and 14, 2001. We received these comments too late for consideration in this preliminary determination. We will consider these comments for the final determination.

C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of structural steel beams in the third country were made at prices below their cost of production (''COP''). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice,* 66 FR 33048, 33051).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (''G&A''), interest expenses, and third country packing costs (*see* ''Test of Third Country Sales Prices'' section below for treatment of third country selling expenses). We relied on the COP data submitted by ProfilARBED except in the following instances:

A. We adjusted the values of electricity, capital leasing and natural gas purchased from affiliated parties to reflect the higher of transfer price, market price or the supplier's COP, in accordance with sections 773(f)(2) and (3) of the Act.

B. We revised the G&A rate to include exchange gains and losses on accounts payable in the numerator of the calculation and to exclude packing expenses from the denominator of the calculation.

C. We revised the financial expense rate to exclude short-term interest income offsets for dividends and trade receivables.

D. We revised the denominator in the consolidated financial expense rate calculation to reflect cost of goods sold rather than raw materials.

See Memorandum from Heidi Norris to Neal Halper, Director Office of Accounting, dated December 19, 2001, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination.

2. Test of Third Country Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the third country sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard third country market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of third country sales during the POI were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOT for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices [3], we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301 (Fed. Cir. March 7, 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.* no LOT

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common structural steel beams selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We obtained information from ProfilARBED regarding the marketing stages involved in making the reported third country and U.S. sales, including a description of the selling activities performed by ProfilARBED for each channel of distribution. ProfilARBED's LOT findings are summarized below.

We examined the chain of distribution and the selling activities associated with sales reported by ProfilARBED to distributors in the German market. ProfilARBED's sales to different distributors did not differ from each other with respect to selling activities (*e.g.* market research, advertising and promotion, technical services, sales calls and demonstrations). Based on our overall analysis, we found that all of ProfilARBED's sales to distributors constituted one LOT.

In the U.S. market, ProfilARBED reported CEP sales only. Therefore, we treated all of ProfilARBED's U.S. sales as sales to an affiliated importer (*i.e.,* at the constructed, or CEP, LOT) and found only one LOT. This CEP LOT differed considerably from the German market LOT in that ProfilARBED reported a lower intensity of selling activities associated with market research, advertising, technical service, sales calls and demonstrations, and warranties for the CEP LOT than the German market LOT. We found the CEP LOT to be different from the German market LOT and to be at a less advanced stage of distribution than the German market LOT. Consequently, we could not match CEP sales to sales at the same LOT in the German market, nor could we determine a LOT adjustment based on ProfilARBED's sales to Germany. Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment.

Because there is only one LOT in the German market, it is not possible to determine if there is a pattern of consistent price differences between the sales on which NV is based and German market sales at the LOT of the export transaction. Accordingly, because the data available do not form an appropriate basis for making a LOT adjustment but the German market LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) The indirect selling expenses on the German market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We made deductions, where appropriate, from the starting price for discounts and rebates. We also made deductions for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for warranties. ProfilARBED reported some German sales data on a theoretical-weight basis. We adjusted these data to state them on an actual-weight basis.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-Average margin percentage
ProfilARBED	2.40
All Others	2.40

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for

Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: December 19, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–32000 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121801G]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) will hold public hearings to receive public comment on the draft fishery management plan (FMP) for West Coast highly migratory species (HMS) fisheries. This notice announces the dates and locations of these public hearings. The draft FMP will be available after December 31, 2001.

DATES: Public hearings will be held January 28–February 4, 2002 at seven West Coast locations. See **SUPPLEMENTARY INFORMATION** for specific date and time information.

ADDRESSES: Documents will be available from and written comments should be sent to Dr. Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220; phone: 503–326–6352 or fax: 503–326–6831. For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck; phone: 503–326–6352.

SUPPLEMENTARY INFORMATION: Public hearings will be held to receive comments on the draft FMP at the following locations and times:

January 28, 2002, 4 p.m.: Natural Resources Building, 1111 Washington Street, Room 172, Olympia, WA 98501.

January 29, 2002, 7 p.m.: Red Lion Inn, Pacific Room, 400 Industry, Astoria, OR 97103.

January 30, 2002, 7 p.m.: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420.

January 31, 2002, 7 p.m.: Red Lion Hotel Eureka, Evergreen Room, 1929 Fourth Street, Eureka, CA 95501.

February 1, 2002, 7 p.m.: Moss Landing Community Center, 8071 Moss Landing Road, Moss Landing, CA 95039.

February 2, 2002, 11 a.m.: Hilton Port of Los Angeles/San Pedro, Terrasini Room, 2800 Via Cabrillo Marina, San Pedro, CA 90731.

February 4, 2002, 7 p.m.: Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA 92109.

The public may also provide oral and written comments on the draft FMP during the March 2002 Council meeting, which will be held March 11-15, 2002 at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, CA 95815. At that time, the Council is scheduled to take final action on the HMS FMP.

Although non-emergency issues not contained in this hearing notice may arise for discussion, those issues may not be the subject of formal action during these hearings. Action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 (voice), or 503–326–6831 (fax) at least 5 days prior to the meeting date.

Dated: December 19, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–31974 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121901C]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of foreign fishing applications.

SUMMARY: NMFS publishes for public review and comment a summary of applications submitted by the Government of the Russian Federation requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 2002 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed here:

Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01905, Phone (978) 465–0492, Fax (978) 465–3116;

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904, Phone (302) 674–2331, Fax (302) 674–4136.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes, for public review and comment, summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

This notice concerns the receipt of two applications from the Government of the Russian Federation requesting authorization to conduct joint venture (JV) operations in 2001 in the Northwest Atlantic Ocean for Atlantic herring and Atlantic mackerel. The stern trawler/processors KAPITAN GORBACHEV, PATROKL and RYBACHIY are identified as the Russian vessels that would receive Atlantic herring and Atlantic mackerel from U.S. vessels in

JV operations. The applications also request allocations totaling 4,500 metric tons (mt) of Atlantic herring and 3,500 mt of Atlantic mackerel for harvest by the named vessels in 2001.

Dated: December 20, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–31975 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong; Correction

December 20, 2001

In the letter to the Commissioner of Customs published in the Federal Register on December 5, 2001 (66 FR 63219), on page 63220, 2nd column, in the table listing import restraint limits, categories 331pt. and 631pt. were inadvertently omitted from the list of categories covered under Group II. A letter has been sent to the Commissioner of Customs to add these categories to the categories listed under Group II.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–31888 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China and and Amendment of Export Visa and Certification Requirements for Textiles and Textile Products Integrated into GATT 1994 in the First, Second and Third Stage

December 20, 2001

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing the 2002 limits and amending visa requirements.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in China and exported during the period January 1, 2002 through December 31, 2002 are based on limits to be notified to the Textiles Monitoring Body pursuant to the World Trade Organization (WTO) Agreement on Textiles and Clothing (ATC).

The ATC provides for the staged integration of textiles and textile products into the General Agreement on Tariffs and Trade (GATT) 1994. For WTO members, the first stage of the integration took place on January 1, 1995 and the second stage took place on January 1, 1998. The products to be integrated in each stage were announced on April 26, 1995 (see 60 FR 21075, published on May 1, 1995 and 63 FR 53881, published on October 7, 1998).

The third stage of the integration will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). The United States will implement the first three stages of integration for China on that date. Accordingly, certain previously restrained categories have been modified and their limits have been revised, and other categories have been eliminated. Integrated products will no longer be subject to quota. This directive implements stages one, two and three of integration and agreed annual growth, but does not apply accelerated growth. CITA will amend China's quotas by applying accelerated quota growth at a later date.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

The United States will not maintain quota and visa requirements on textiles and textile products that were integrated in stages one, two and three, that were produced or manufactured in China and exported on or after December 11, 2001 (for products integrated in stages one and two), and January 1, 2002 (for products integrated in stage three). In the letter published below, the Chairman of CITA directs the Commissioner of Customs to eliminate existing quota and visa requirements for textiles and textile products that were integrated for WTO members on January 1, 1995 and January 1, 1998, and exported on or after December 11, 2001, produced or manufactured in China (see 66 FR 63225, published on December 5, 2001). The letter also directs the Commissioner to eliminate existing quota and visa requirements for textiles and textile products that were integrated on January 1, 2002, and exported on and after that date. The existing quota and visa requirements for China will be maintained for goods exported prior to integration. Goods integrated in stages one, two and three will no longer require exempt certification.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 2001

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200, 218, 219, 226, 237, 300/301, 313–315, 317/326, 331pt.[1], 333–336, 338/339, 340–342, 345, 347/348, 351, 352, 359–C[2], 359–V[3], 360–363, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 611, 613–615, 617, 631pt.[4], 633–636, 638/639, 640–643, 644, 645/646, 647, 648, 651, 652, 659–C[5], 659–H[6], 659–S[7], 666pt.[8], 845 and 846, as a group.	1,166,909,854 square meters equivalent.
Sublevels in Group I	
200	806,465 kilograms.
218	11,894,852 square meters.
219	2,615,324 square meters.
226	11,875,471 square meters.
237	2,208,501 dozen.
300/301	2,392,195 kilograms.
313	44,497,362 square meters.
314	53,482,625 square meters.
315	139,869,297 square meters.
317/326	23,574,649 square meters of which not more than 4,510,294 square meters shall be in Category 326.
331pt.	2,182,262 dozen pairs.
333	108,322 dozen.
334	340,681 dozen.
335	394,153 dozen.
336	187,293 dozen.
338/339	2,369,131 dozen of which not more than 1,798,430 dozen shall be in Categories 338–S/339–S[9].
340	811,310 dozen of which not more than 405,653 dozen shall be in Category 340–Z[10].
341	702,993 dozen of which not more than 421,796 dozen shall be in Category 341–Y[11].
342	277,424 dozen.
345	129,808 dozen.
347/348	2,360,641 dozen.
351	616,145 dozen.
352	1,670,292 dozen.
359–C	668,278 kilograms.
359–V	945,532 kilograms.
360	8,568,821 numbers of which not more than 5,844,764 numbers shall be in Category 360–P[12].
361	4,653,809 numbers.
362	7,691,848 numbers.
363	22,606,232 numbers.
410	1,029,319 square meters of which not more than 825,111 square meters shall be in Category 410–A[13] and not more than 825,111 square meters shall be in Category 410–B[14].
433	21,166 dozen.
434	13,533 dozen.
435	24,856 dozen.
436	15,313 dozen.
438	26,797 dozen.
440	38,285 dozen of which not more than 21,876 dozen shall be in Category 440–M[15].
442	40,526 dozen.
443	130,926 numbers.
444	213,186 numbers.
445/446	288,910 dozen.
447	71,682 dozen.
448	22,613 dozen.
611	5,842,402 square meters.
613	8,266,993 square meters.
614	12,990,987 square meters.
615	27,044,876 square meters.
617	18,895,981 square meters.
631pt.	316,495 dozen pairs.
633	61,450 dozen.
634	668,535 dozen.
635	705,188 dozen.
636	569,258 dozen.
638/639	2,510,680 dozen.
640	1,407,471 dozen.
641	1,333,287 dozen.
642	365,581 dozen.
643	541,130 numbers.
644	3,610,330 numbers.
645/646	830,040 dozen.
647	1,618,411 dozen.
648	1,156,344 dozen.
651	829,339 dozen of which not more than 146,011 dozen shall be in Category 651–B[16].
652	3,060,771 dozen.
659–C	439,060 kilograms.
659–H	3,066,720 kilograms.
659–S	672,958 kilograms.
666pt.	514,992 kilograms.
845	2,474,275 dozen.
846	184,534 dozen.
Group II	
332, 359–O[17], 459pt.[18] and 659–O[19], as a group.	40,686,683 square meters equivalent.
Group III	
201, 220, 224–V[20], 224–O[21], 225, 227, 369–O[22], 400, 414, 469pt.[23], 603, 604–O[24], 618–620 and 624–629, as a group.	48,037,946 square meters equivalent.
Sublevel in Group III	
224–V	3,934,899 square meters.
225	6,788,450 square meters.
Group IV	
852	367,732 square meters equivalent.
Levels not in a Group	
369–S[25]	617,516 kilograms.
863–S[26]	8,792,197 numbers.

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[5] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[6] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[7] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[9] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[10] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[11] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[12] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[13] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[14] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[15] Category 440–M: only HTS numbers 6203.21.9030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[16] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[17] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[18] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[19] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[20] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[21] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[22] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.21.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[23] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[24] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[25] Category 369–S: only HTS number 6307.10.2005.

[26] Category 863–S: only HTS number 6307.10.2015.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products exported during 2001 shall be charged to the applicable category limits for that year (see directive dated December 20, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive. You are also directed to amend the directive dated December 20, 2000 (65 FR 81846, published on December 27, 2000).

Products to be integrated into the General Agreement on Tariffs and Trade (GATT) 1994 in stage three (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit. Products integrated into GATT 1994 in stages one and two which are exported prior to December 11, 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After that date, should those 2001 limits be filled, such products shall no longer be charged to any limit.

You are further directed to amend the current quota and visa requirements for certain textiles and textile products produced or manufactured in China and exported on or after December 11, 2001 and December 31, 2001.

Effective on January 1, 2002, for goods exported on or after December 11, 2001, quotas will be removed and export visas will

not be required for textiles and textile products produced or manufactured in China that were integrated into GATT 1994 on January 1, 1995 and January 1, 1998 (see directive dated November 29, 2001, 66 FR 63225, published on December 5, 2001). Export visas will continue to be required for such products that were exported prior to December 11, 2001. Effective January 1, 2002, for goods exported on or after that date, quotas will be removed and export visas will not be required for textiles and textile products produced or manufactured in China that were integrated into GATT 1994 on January 1, 2002. Export visas will continue to be required by such products that were exported prior to January 1, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

D. Michael Hutchinson,

Acting Committee for the Implementation of Textile Agreements.

[FR Doc. 01–31860 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain; Correction

December 20, 2001

In the letter to the Commissioner of Customs published in the Federal Register on November 14, 2001 (66 FR 57042), on page 57043, 1st column, in the table listing import restraint limits, categories 845 and 846 were inadvertently omitted from the list of categories covered under Group I. A letter has been sent to the Commissioner of Customs to add these categories to the categories listed under Group I.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–31889 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan and Amendment of Export Visa and Certification Requirements for Textiles and Textile Products Integrated into GATT 1994 in the First, Second and Third Stage

December 20, 2001

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and amending visa requirements.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Taiwan and exported during the period January 1, 2002 through December 31, 2002 are based on limits that will be notified to the Textiles Monitoring Body pursuant to the World Trade Organization (WTO) Agreement on Textiles and Clothing (ATC). Taiwan will accede to the WTO on January 1, 2002.

The ATC provides for the staged integration of textiles and textile products into the General Agreement on Tariffs and Trade (GATT) 1994. For WTO members, the first stage of the integration took place on January 1, 1995 and the second stage took place on January 1, 1998. The products to be integrated in each stage were announced on April 26, 1995 (see 60 FR 21075, published on May 1, 1995 and 63 FR 53881, published on October 7, 1998).

The third stage of the integration will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). The United States will implement the first three stages of integration for Taiwan on that date. Accordingly, certain previously restrained categories have been modified and their limits have been revised. Certain other previously restrained categories have been eliminated. Integrated products will no longer be subject to quota. This directives implements stages one, two and three integration and agreed annual growth, but does not apply accelerated growth. CITA will amend Taiwan's quotas by applying accelerated growth at a later date.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

The United States will not maintain visa requirements on textiles and textile products that were integrated in stage one, two and three, that were produced or manufactured in Taiwan and exported on or after January 1, 2002. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to eliminate existing visa requirements for textiles and textile products that were integrated on January 1, 1995, January 1, 1998 and January 1, 2002, and exported on or after January 1, 2002, produced or manufactured in Taiwan (see 66 FR 63225, published on December 5, 2001). The existing visa requirements for Taiwan will be maintained for goods exported prior to January 1, 2002. Integrated goods no longer require exempt certification. In addition, the Export Certification System (E/C System) for Taiwan is rescinded effective January 1, 2002.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 2001

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the

United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200–221, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [1], 369–O [2], 400–414, 469pt [3], 603, 604, 611, 613/614/615/617, 618, 619/620, 623, 624, 625/626/627/628/629 and 666pt [4], as a group.	205,611,995 square meters equivalent.
Sublevels in Group I	
218	23,326,223 square meters.
225/317/326	41,403,983 square meters.
226	7,513,501 square meters.
300/301	1,781,052 kilograms of which not more than 1,494,524 kilograms shall be in Category 300; not more than 1,494,524 kilograms shall be in Category 301.
363	12,329,235 numbers.
611	3,362,222 square meters.
613/614/615/617	20,852,171 square meters.
619/620	15,326,668 square meters.
625/626/627/628/629	19,943,616 square meters.
Group I subgroup	
200, 219, 313, 314, 315, 361, 369–S and 604, as a group.	153,118,428 square meters equivalent.
Within Group I subgroup	
200	753,714 kilograms.
219	17,153,795 square meters.
313	68,671,137 square meters.
314	30,555,457 square meters.
315	23,413,267 square meters.
361	1,514,047 numbers.
369–S	492,487 kilograms.
604	239,325 kilograms.
Group II	
237, 239pt [5], 331pt. [6], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [7], 659–H [8], 359pt. [9], 433-438, 445/446, 447/448, 459pt. [10], 631pt. [11], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [12], 659pt. [13], 846 and 852, as a group.	621,535,524 square meters equivalent.
Sublevels in Group II	
237	736,389 dozen.
239pt.	1,346,848 kilograms.
331pt.	143,982 dozen pairs.
336	125,460 dozen.
338/339	831,284 dozen.
340	1,123,393 dozen.
345	131,090 dozen.
347/348	1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W [14].
352/652	3,328,576 dozen.
359–C/659–C	1,447,633 kilograms.
659–H	2,069,969 kilograms.
433	15,701 dozen.
434	10,904 dozen.
435	25,889 dozen.
436	5,155 dozen.
438	29,095 dozen.
440	5,636 dozen.
442	43,871 dozen.
443	43,961 numbers.
444	62,611 numbers.
445/446	138,149 dozen.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,565,058 dozen.
640	1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y [15].
642	777,133 dozen.
643	523,166 numbers.
644	798,870 numbers.
645/646	4,107,691 dozen.
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W [16].
659–S	1,601,702 kilograms.
Group II Subgroup	
333/334/335, 341, 342, 351, 447/448, 636, 641 and 651, as a group.	72,524,979 square meters equivalent.
Within Group II Subgroup	
333/334/335	322,771 dozen of which not more than 174,835 dozen shall be in Category 335.
341	345,045 dozen.
342	215,550 dozen.
351	358,605 dozen.
447/448	21,454 dozen.
636	395,136 dozen.
641	733,276 dozen of which not more than 256,646 dozen shall be in Category 641–Y [17].
651	449,715 dozen.
Group III	
Sublevel in Group III	
845	854,623 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); and 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[4] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060, 6505.90.2545.

[10] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[11] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510, 6406.99.1540.

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products exported during 2001 shall be charged to the applicable category limits for that year (see directive dated February 15, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Taiwanese products integrated into the General Agreement on Tariffs and Trade 1994 in stages one, two and three (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

The conversion factors are as follows:

Category	Conversion factors (square meters equivalent/category unit)
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
633/634/635	34.1
638/639	12.5

You are also directed to amend the current visa requirements for certain textiles and textile products produced or manufactured in Taiwan and exported on or after January 1, 2002.

Effective on January 1, 2002, for goods exported on or after January 1, 2002, export visas and exempt certifications will not be required for textiles and textile products produced or manufactured in Taiwan that were integrated into the General Agreement on Tariffs and Trade (GATT) 1994 on January 1, 1995, January 1, 1998 and January 1, 2002 (see directive dated November 29, 2001). Export visas will continue to be required for products integrated on January 1, 2002 from Taiwan that were exported prior to January 1, 2002.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–31859 Filed 12–27–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 14, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to internet address *Lauren.Wittenberg@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information

collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: December 21, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Grant Application for the FIPSE Comprehensive Program.

Abstract: The Comprehensive Program is a discretionary grant award program of the Fund for the Improvement of Postsecondary Education (FIPSE). Applications are submitted in two stages—preliminary and final. The Program supports innovative reform projects that hold promise as models for the resolution of important issues and problems in postsecondary education. Grants made under this program are expected to contribute new information in educational practice that can be shared with others. As its name suggests, the Comprehensive Program may support activities in any discipline, program, or student service. Nonprofit institutions and organization offering postsecondary education programs are eligible applicants. The Comprehensive Program has established a record of meaningful and lasting improvement to access and quality in postsecondary education.

Additional Information: Since the public last reviewed these guidelines, the Secretary has proposed to streamline them. You have until January 14 to send your related comments to OMB for their consideration.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,650.

Burden Hours: 19,500.

Requests for copies of the proposed information collection request should be directed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO.RIMG@ed.gov, or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–32024 Filed 12–27–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Mercer Ranch Power Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare a joint National Environmental Policy Act (NEPA)/State Environmental Policy Act (SEPA) EIS in cooperation with the State of Washington Energy Facility Site Evaluation Council (EFSEC) for an electrical interconnection with a proposed power plant. BPA is the lead Federal agency under NEPA and EFSEC is the lead Washington State agency under SEPA. The Mercer Ranch Power Project is an 800-megawatt (MW) generating station proposed by Mercer Ranch Power LLC (MRP) that would be located between the communities of Paterson and Roosevelt in Benton County, Washington. MRP has requested an interconnection to BPA's transmission system that would allow power delivery to customers in the Pacific Northwest. A switchyard will be constructed to integrate power from the generating station into the Federal Columbia River Transmission System (FCRTS). BPA proposes to execute an agreement with MRP to provide the interconnection and transmission of power.

ADDRESSES: To be placed on the project mailing list, including notification of proposed meetings, call toll-free 1–800–622–4520, name this project, and leave your complete name and address. To comment, call toll-free 1–800–622–4519; send an e-mail to the BPA Internet address *comment@bpa.gov*; or send a letter to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212.

FOR FURTHER INFORMATION, CONTACT: Donald L. Rose, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–3796; or e-mail dlrose@bpa.gov. Additional information can be found at BPA's web site, *www.bpa.gov;* and EFSEC's web site, *www.efsec.wa.gov.*

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of the proposed project, including:

- The proposed interconnection agreement with MRP;
- The construction and operation of the power plant;
- The construction and operation of less than one-half mile of natural gas pipeline to tie into Northwest Pipeline Corporation (NWP) pipeline;
- The construction and operation of an interconnection to the FCRTS consisting of:
- Approximately one-half mile of 500-kilovolt (kV) transmission line; and
- A new 500-kV switchyard (Crow Butte) linking the Mercer Ranch Power Project to one or more BPA 500-kV transmission lines.

Later this winter, one or more EIS scoping meetings will be held by BPA, EFSEC, and MRP to provide information on the project and associated BPA transmission interconnection and upgrades and to identify topics to be addressed in the EIS. A 45-day comment period will be announced, during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. A 30-day notice of the meeting(s), including time and location, will be provided to interested persons. At the meeting(s), BPA and EFSEC will answer questions and accept oral and written comments.

Receiving comments from interested parties will ensure BPA and EFSEC address the full range of issues and potentially significant impacts related to the proposed project in the EIS. When completed, the Draft EIS will be

circulated for review and comment. BPA and EFSEC will hold at least one public comment meeting on the Draft EIS. BPA and EFSEC will consider and respond in the Final EIS to comments received on the Draft EIS.

Proposed Action. MRP proposes to construct the Mercer Ranch Power Project, a new power plant in southwestern Benton County, Washington. The proposed capacity of the plant is nominally 800 MW, which brings the project under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC) for the State of Washington.

The MRP generating facility will be designed for a life of 40 years. The project is proposed to be constructed as a merchant plant for electric power generation, with generated power routed to the FCRTS.

The new power plant will be located on a site consisting of approximately 40 acres, adjacent to approximately 9,000 acres of irrigated cropland owned by Mercer Ranches, Inc. This site is located in unincorporated Benton County, near the border with Klickitat County. It is approximately 12 miles west of the unincorporated town of Paterson, Washington; 17 miles east of the unincorporated town of Roosevelt; and 2.5 miles north of the Columbia River. The project site is approximately 500 feet above sea level and 245 feet above the normal Columbia River elevation.

The sole fuel for the power generation facility will be pipeline-quality natural gas. Gas transportation services will be provided by the NWP natural gas transmission pipeline, which runs through the plant site. It is anticipated that the natural gas tie-in pipeline will be constructed and owned by MRP since it will be on land owned by MRP.

The power plant will include three individual generating units. Each unit will consist of one General Electric PG7241FA combustion turbine generator (CTG), one triple pressure reheat type Heat Recovery Steam Generator (HRSG) with natural gas supplementary firing capabilities, and one reheat Steam Turbine Generator (STG). The CTGs and the HRSG supplemental firing system will burn only natural gas. Additional equipment dedicated to each unit will include generator step-up transformers, electrical distribution gear, and all associated ancillary equipment. The plant will also use air-cooling technologies for condensing low-pressure steam. Water for plant operations will come from the Columbia River via existing surface water rights.

The Mercer Ranch power project would deliver electricity to the regional power grid through an interconnection to one or more BPA 500-kV transmission line near the plant. The interconnection and proposed upgrade to the transmission grid would include less than one-half mile of new 500-kV transmission line (approximately 2 to 3 towers) and a switchyard (Crow Butte) consisting of up to eight bays to be located east of Dead Canyon. The switchyard would connect the power plant to the existing Ashe-Slatt #1 transmission line and may intertie to the Ashe-Marion #2 500-kV transmission line and the proposed John Day-McNary 500-kV transmission line.

Responsibility for construction and operation of the power plant is principally with MRP. MRP would construct and own the interconnecting 500-kV transmission line. BPA would construct and operate the switchyard.

Process to Date. BPA is the lead Federal agency for the joint NEPA/SEPA EIS, and EFSEC is the lead Washington State agency. EFSEC has already held open houses introducing the MRP Project to interested parties in Benton County. MRP will prepare an Application for Site Certification and submit it to EFSEC in January 2002. The application will address the MRP Project in detail. BPA and EFSEC will conduct joint scoping meetings after receipt and preliminary review of the initial submission.

Alternatives Proposed for Consideration. Alternatives thus far identified for evaluation in the EIS are (1) the proposed actions, and (2) no action. Other alternatives may be identified through the scoping process.

Identification of Environmental Issues. EFSEC will prepare an EIS consistent with its responsibilities under Chapter 80.50 of the Revised Code of Washington and Chapter 197–11 of the Washington Administrative Code. BPA must make a decision whether to construct the proposed switchyard and interconnect the proposed power plant to the regional transmission grid. Therefore, BPA and EFSEC intend to prepare a joint NEPA/SEPA EIS addressing both the power plant and the associated electric power interconnection and transmission facilities. The principal issues identified thus far for consideration in the Draft EIS are (1) air quality impacts, (2) aesthetic and visual impacts, (3) socio-economic impacts, (4) wetlands and wildlife habitat impacts, (5) water quality impacts, and (6) cultural resource impacts. These issues, together with any additional significant issues identified through the scoping process, will be addressed in the EIS.

Issued in Portland, Oregon, on December 18, 2001.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 01–31920 Filed 12–27–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Intent To Grant Exclusive Patent License

AGENCY: Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice.

SUMMARY: Notice is hereby given of an intent to grant to Woodward Industrial Controls of Fort Collins, Colorado, an exclusive license to practice the inventions described in U.S. patent applications titled, ''Real-Time Combustion Controls and Diagnostics Sensors'' and ''Flashback Detection Sensor for Lean Premix Fuel Nozzles.'' The inventions are owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated.

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 15 days of publication of this Notice the Technology Transfer Manager, Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880, receives in writing any of the following, together with the supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than fifteen (15) days after the date of this published Notice.

ADDRESSES: Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Diane Newlon, Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; Telephone (304) 285–4065.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Woodward Industrial Controls of Fort Collins, Colorado, has applied for an exclusive license to practice the inventions and has a plan for commercialization of the inventions.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 15-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued: December 18, 2001.

Rita A. Bajura,

Director, National Energy Technology Laboratory.

[FR Doc. 01–31921 Filed 12–27–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–42–000]

Dynegy Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Mirant California, LLC, and Williams Energy Marketing & Trade, Complainants, v. California Independent System Operator Corporation, Respondent; Notice of Complaint

December 19, 2001.

Take notice that on December 18, 2001, Dynegy Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Mirant California, LLC, and Williams Energy Marketing & Trading Company (Complainants) submitted a complaint against the California Independent System Operator Corporation (CAISO) alleging that the CAISO is acting unlawfully by implementing changes to its operating procedures related to Intra-Zonal Congestion Management and implementing market rule modifications for importers without first seeking authorization under section 205 of the Federal Power Act. Complainants further allege that certain operating procedures violate the terms of the Commission-approved reliability must-run contracts.

Accordingly, Complainants request that the Commission issue an immediate order directing the CAISO to operate under its prior operating procedures until such time as the CAISO has received all Commission authorizations to make these changes. Complainants also request that Commission Staff hold a technical conference to develop a 60-minute market.

Copies of this filing were served upon the CAISO and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before January 7, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before January 7, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31991 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–81–001]

El Paso Natural Gas Company; Notice of Tariff Filing

December 20, 2001.

Take notice that on December 18, 2001, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Substitute Eighth Revised Sheet No. 37, with an effective date of January 1, 2002.

On November 29, 2001 in Docket No. RP02–81–000, EPNG submitted for filing ten revised tariff sheets to be effective on January 1, 2002. EPNG states that it is submitting Substitute Eighth Revised Sheet No. 37 to reflect the same maximum monthly California reservation rate shown on the Sheet No. 22 submitted in the original filing on November 29.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31998 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–90–001]

El Paso Natural Gas Company; Notice of Tariff Filing

December 20, 2001.

Take notice that on December 18, 2001, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Substitute Ninth Revised Sheet No. 37, with an effective date of January 1, 2002.

On November 30, 2001 in Docket No. RP02–90–000, EPNG submitted for filing thirteen revised tariff sheets to be effective on January 1, 2002. EPNG states that is submitting Substitute Ninth Revised Sheet No. 37 to reflect the same maximum monthly California reservation rate as shown on the Sheet No. 22 submitted in the original filing on November 30.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31999 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–125–000]

Gulf South Pipeline Company, LP; Request for Waiver of OFO Penalty Provisions

December 20, 2001.

Take notice that on December 18, 2001, Gulf South Pipeline Company, LP (Gulf South) tendered for filing a request seeking authority to waive certain requirements of sections 10 and 19 of the General Terms and Conditions of its FERC Gas Tariff. Specifically, Gulf South is seeking authority to waive all penalties associated with the Operational Flow Order that was issued on November 24, 2001.

Gulf South states that copies of this filing has been served upon its customers, interested state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed December 31, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31996 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–92–001]

K N Wattenberg Transmission Limited Liability Company; Notice of Tariff Filing

December 20, 2001.

Take notice that on December 7, 2001, K N Wattenberg Transmission Limited Liability Company (KN Wattenberg) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, a corrected tariff sheet, to become effective December 1, 2001:

Second Revised Sheet No. 0

On November 30, 2001, KN Wattenberg submitted a filing in Docket No. RP02–92–000 to cancel its tariff. KN Wattenberg sought an effective date of December 1, 2001. KN Wattenberg, however, inadvertently included the wrong effective date on the tariff sheets included in the filing. In this filing, KN Wattenberg has attached a corrected tariff sheet and a corrected marked version of the tariff sheet.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31994 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–2353–000 and ER97–2353–004]

New York State Electric & Gas Corporation; Notice of Filing

December 20, 2001.

Take notice that on November 30, 2001, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to its September 15, 2001 Compliance Filing in the above docket to supply additional information requested by the Federal Energy Regulatory Commission (Commission) in its October 30, 2001 letter.

Copies of the filing have been served on all parties listed on the official service list.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Comment Date: December 28, 2001.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31992 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–124–000]

Northern Natural Gas Company; Notice of Tariff Filing

December 20, 2001.

Take notice that on December 17, 2001, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheet, with an effective date of December 6, 2001:

Fifth Revised Volume No. 1

Sixth Revised Sheet No. 3

Original Volume No. 2

68 Revised Sheet No. 1
Second Revised Sheet No. 483

Northern states that the above referenced sheets represent cancellation of Rate Schedule X–33 from Northern's Original Volume No. 2 FERC Gas Tariff, and the associated deletions from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31995 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–580–004 and CP99–582–005]

Southern LNG Inc.; Notice of Compliance Filing

December 20, 2001.

Take notice that on December 14, 2001, Southern LNG Inc. (Southern LNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following proposed sheets to become effective December 1, 2001:

Substitute Original Sheet No. 5
Substitute Original Sheet No. 6
Substitute Original Sheet No. 7
Substitute Original Sheet No. 20
Substitute Original Sheet No. 31
Substitute Original Sheet No. 60
Substitute Original Sheet No. 99
Substitute Original Sheet No. 101
Substitute Original Sheet No. 102
Substitute Original Sheet No. 133

Southern LNG states that the filing implements certain directives in the Commission's order issued on November 30, 2001 in the captioned proceeding.

SLNG states that copies of the filing will be served upon its customers and interested state commissions, and upon each party designated on the official service listed compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 28, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31990 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–35–000, et al.]

Engage Energy America LLC, et al.; Electric Rate and Corporate Regulation Filings

December 20, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Engage Energy America LLC, and Frederickson Power L.P. and Duke Energy Corporation

[Docket No. EC02–35–000]

Take notice that on December 14, 2001, Engage Energy America LLC (Engage America) and Frederickson Power, L.P. (Frederickson), and Duke Energy Corporation (Duke Energy) filed a joint application pursuant to section 203 of the Federal Power Act for approval of a change in upstream control and the resulting disposition of jurisdictional facilities resulting from the transaction between Westcoast Energy Inc. (Westcoast) and Duke Energy pursuant to the Amended and Restated Combination Agreement made as of September 20, 2001, by and among Duke Energy, 3058368 Nova Scotia Company, 3946509 Canada Inc., and Westcoast.

Comment Date: January 11, 2002.

2. TXU Tradinghouse Company LP

[Docket No. EG02–49–000]

Take notice that on December 18, 2001, TXU Tradinghouse Company LP (TXU Tradinghouse) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

On or about January 1, 2002, TXU Tradinghouse will own the facilities described as follows:

Name and location	Eligible facilities	Net megawatts produced
TXU—Tradinghouse, 1868 Lake Felton Parkway Waco, TX 76705	Tradinghouse No. 1	565
	Tradinghouse No. 2	818

Comment Date: January 10, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. TXU DeCordova Company LP

[Docket No. EG02–50–000]

Take notice that on December 18, 2001, TXU DeCordova Company LP (TXU DeCordova) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Name and location	Eligible facilities	Net megawatts produced
TXU—DeCordova, 4950 Power Plant Court, Granbury, TX 76048	Decordova No. 1	818

Comment Date: January 10, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TXU Mountain Creek Company, LP

[Docket No. EG02–51–000]

Take notice that on December 18, 2001, TXU Mountain Creek Company LP (TXU Mountain Creek) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

On or about January 1, 2001, TXU Mountain Creek will own the facilities described as follows:

Name and location	Eligible facilities	Net megawatts produced
TXU—Mountain Creek, 2233–A Mt. Creek Parkway, Dallas, TX 75211	Mountain Creek No. 2	33
	Mountain Creek No. 3	70
	Mountain Creek No. 6	115
	Mountain Creek No. 7	125
	Mountain Creek No. 8	550

Comment Date: January 10, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. TXU Big Brown Company LP

[Docket No. EG02–52–000]

Take notice that on December 18, 2001, TXU Big Brown Company LP (TXU Big Brown) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Name and location	Eligible facilities	Net megawatts produced
TXU—Big Brown, P.O. Box 948, Fairfield, TX 75840	Big Brown Unit No. 1	575

Name and location	Eligible facilities	Net megawatts produced
	Big Brown Unit No. 2	575

Comment Date: January 10, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. TXU Handley Company LP

[Docket No. EG02–53–000]

Take notice that on December 18, 2001, TXU Handley Company LP (TXU Handley) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Name and location	Eligible facilities	Net megawatts produced
TXU—Handley, 6604 E. Rosedale, Ft. Worth, TX 76112–7027	Handley No. 1	45
	Handley No. 2	80
	Handley No. 3	400
	Handley No. 4	58
	Handley No. 5	458

Comment Date: January 10, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Duke Power Company, a division of Duke Energy Corporation

[Docket No. ER96–110–007]

Take notice that on December 17, 2001, Duke Power Company, a division of Duke Energy Corporation, submitted an updated market power analysis.

Duke Power states that a copy of the filing has been served on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: January 7, 2002.

8. Portland General Electric Company, Lake Benton Power Partners, LLC, Storm Lake Power Partners I, LLC, Storm Lake Power Partners II, LLC, Enron Energy Services, Inc., Enron Power Marketing, Inc., Clinton Energy Management Services, Inc., Enron Energy Marketing Corp., The New Power Company, Enron Sandhill Limited Partnership, Green Power Partners I, LLC

[Docket No. ER98–1643–004, Docket No. ER97–2904–004, Docket No. ER98–4643–002, Docket No. ER99–1228–002, Docket No. ER98–13–015, Docket No. ER94–24–035, Docket No. ER98–3934–008, Docket No. ER00–2395–001, Docket No. ER00–2535–001, Docket No. ER01–1166–002, and Docket No. ER00–3776–001]

Take notice that on December 14, 2001, Portland General Electric Company (PGE), on behalf of itself and the above-noted PGE affiliates (PGE Affiliates) filed with the Federal Energy Regulatory Commission (Commission) a withdrawal of the notice of change in status with the Commission.

Comment Date: January 4, 2002.

9. PPL EnergyPlus, LLC

[Docket No. ER98–4608–005]

Take notice that on December 17, 2001, PPL EnergyPlus, LLC (PPL EnergyPlus) filed with the Federal Energy Regulatory Commission (Commission) an updated market power analysis pursuant to Ordering Paragraph (J) of the Commission's order in PP&L EnergyPlus Company, 85 FERC ¶ 61,377 (1998).

PPL EnergyPlus has served a copy of this filing on the parties on the Commission's official service list for this docket.

Comment Date: January 7, 2002.

10. Sunlaw Energy Partners I, L.P.

[Docket No. ER99–213–001]

Take notice that on December 14, 2001, Sunlaw Energy Partners I, L.P. (Sunlaw) filed with the Federal Energy Regulatory Commission (Commission) a triennial updated market analysis in compliance with the Commission's December 14, 1998 Order in Docket No. ER99–213–000, which authorized Sunlaw to sell energy and capacity at market-based rates.

Comment Date: January 4, 2002.

11. NYSEG Solutions, Inc.

[Docket No. ER99–220–008]

Take notice that on December 14, 2001, NYSEG Solutions, Inc. (NYSEG Solutions) tendered for filing with the Federal Energy Regulatory Commission (Commission) a letter concerning its triennial market power review pursuant to an order issued by the Commission in Docket No.ER99–220–000 on December 14, 1998 granting NYSEG market-based rate authorization.

Comment Date: January 4, 2002.

12. New York State Electric & Gas Corporation

[Docket No. ER99–221–005]

Take notice that on December 14, 2001, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) a letter concerning its triennial market power review pursuant to an order issued by the Commission in Docket No.ER98–221–000 on December 14, 1998 granting NYSEG market-based rate authorization.

Comment Date: January 4, 2002.

13. Michigan Electric Transmission Company

[Docket Nos. ER01–2126–005 and ER01–2375–004]

Take notice that on December 14, 2001, Michigan Electric Transmission Company (METC) tendered for filing the following Service Agreements under its FERC Electric Tariff No. 1 in compliance with the November 14, 2001 order issued in these proceedings, Second Substitute Service Agreement Nos. 24 and 25.

The Service Agreements are to have effective dates of April 27 2001, and June 21, 2001, respectively. Copies of the filing were served upon those on the official service lists in these proceedings.

Comment Date: January 4, 2002.

14. New York Independent Systems Operator, Inc.

[Docket Nos. ER97–1523–067, OA97–470–062, ER97–4234–060, and ER01–2230–002]

Take notice that on November 30, 2001 Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission (Commission)

additional information in response to Letter Order dated October 31, 2001.

Copies of this response has been served on all parties of record in the above-referenced docket numbers.

Comment Date: January 3, 2002.

15. Calpine Construction Finance Company, L.P.

[Docket No. ER01–2784–002]

Take notice that on December 12, 2001, Calpine Construction Finance Company, L.P. (CCFC) filed a refund report in compliance with the Commission's order in this proceeding dated September 27, 2001.

Comment Date: January 2, 2002.

16. Public Service Company of Oklahoma

[Docket No. ER01–2857–001]

Take notice that on December 14, 2001, Public Service Company of Oklahoma (PSO) tendered for filing an amendment to its August 16, 2001 filing in this docket. The amendment includes a cost support for the O&M charge to be included as part of the executed Restated and Amended Interconnection Agreement dated July 26, 2001 between PSO and Kiowa Power Partners, LLC (Kiowa). This filing is made in compliance with the October 12, 2001 Deficiency Letter from Michael A. Colemen, Director of Rate and Tariffs West. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6 effective June 15, 2000.

AEP requested an effective date of October 15, 2001. A copy of the filing was served upon the Oklahoma Corporation Commission.

Comment Date: January 4, 2002.

17. USGen New England, Inc.,

[Docket No. ER98–6–008]

Take notice that on December 14, 2001, the subsidiaries of PG&E National Energy Group, Inc. that have been granted market-based rates by the Commission submitted for filing a triennial market power update pursuant to the orders granting them market-based rates and Section 205 of the Federal Power Act.

Comment Date: January 4, 2002.

18. Reliant Energy Seward, LLC, Reliant Energy Hunterstown, LLC

[Docket No. ER01–3035–001 and ER01–3036–001]

Take notice that on December 17, 2001, Reliant Energy Seward, LLC (RE Seward) and Reliant Energy Hunterstown, LLC (RE Hunterstown) filed with the Federal Energy Regulatory Commission (Commission) an amendment to their application dated September 10, 2001 for grant of certain blanket authorizations, waiver of certain of the Commission's Regulations and issuance of an order accepting each of RE Seward's and RE Hunterstown's FERC Electric Tariff, Original Volume No. 1. RE Seward and RE Hunterstown amended their application to provide the requested supporting information needed to determine whether RE Seward and RE Hunterstown satisfy the standards under which the Commission has granted authority to sell at market-based rates.

Comment Date: January 7, 2002.

19. Hardee Power Partners Limited

[Docket No. ER01–3064–001]

Take notice that on November 30, 2001, Hardee Power Partners Limited tendered for filing its filing in compliance with the Commission's October 19, 2001 letter order issued in the above-referenced proceeding.

Copies of the filing were served upon the Official Service List compiled by the Secretary in this proceeding.

Comment Date: January 2, 2002.

20. Kentucky Power Company

[Docket No. ER01–3120–001]

Take notice that on December 17, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing an amended unexecuted Interconnection and Operation Agreement between Kentucky Power Company and Foothills Generating, L.L.C. This filing is made in compliance with the Commission's Order Modifying and Accepting Unexecuted Generator Interconnection Agreement issued in this docket on November 20, 2001, 97 FERC ¶ 61,202 (2001). The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of November 26, 2001. A copy of the filing was served upon the Kentucky Public Service Commission.

Comment Date: January 7, 2002.

21. Appalachian Power Company

[Docket No. ER01–3122–001]

Take notice that on December 17, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing an amended unexecuted Interconnection and Operation Agreement between Appalachian Power Company and Duke Energy Wythe, LLC. This filing is made in compliance with the Commission's Order Accepting and Rejecting Filing in Part and Establishing Hearing and Settlement Judge Procedures issued in this docket on November 20, 2001, 97 FERC ¶ 61,199 (2001). The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of November 26, 2001. A copy of the filing was served upon the Virginia State Corporation Commission.

Comment Date: January 7, 2002.

22. Pacific Gas and Electric Company

[Docket No. ER02–4–000]

Take notice that on December 14, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a Second Request for Deferral of Consideration of its October 1, 2001 filing, Notice of Cancellation of PG&E First Revised Rate Schedule FERC No. 215, Must-Run Service Agreement between PG&E and the California Independent System Operator Corporation for the FMC Synchronous Condenser/ Emergency Gas Turbine, in Docket No. ER02–4–000. PG&E and the ISO are currently discussing PG&E's October 1, 2001 filing. PG&E, therefore, is notifying the Commission that these discussions will not be completed by December 29, 2001.

PG&E requests that the Commission's deferral of consideration be extended for an additional 48 day period, until February 15, 2002. Copies of this filing have been served upon the California Public Utilities Commission and all parties designated on the official service list in this proceeding.

Comment Date: January 4, 2002.

23. Power Resource Group, Inc.

[Docket No. ER02–95–000]

Take notice that on December 17, 2001, Power Resource Group, Inc. (PRG) tendered for filing an amendment to its application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule, Rate Schedule FERC No. 1, Original Volume No. 1. PRG proposes that its Rate Schedule FERC No. 1, Original Volume No. 1 become effective October 15, 2001, which is one business day after the date of its original filing in this proceeding.

Comment Date: January 7, 2002.

24. American Electric Power Service Corporation

[Docket No. ER02–544–000]

Take notice that on December 17, 2001, the American Electric Power Service Corporation (AEPSC), tendered for filing Firm and Non-Firm Point-to-Point Transmission (PTP) Service Agreements for Dominion Nuclear Marketing II, Inc. These agreements are pursuant to the SEP Companies' Open Access transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6.

AEPSC requests waiver of notice to permit the Revised Service Agreement to be made effective on and after December 1, 2001.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: January 7, 2002.

25. Pacific Gas and Electric Company

[Docket No. ER02–545–000]

Take notice that on December 17, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing an annual update filing including revisions to its Reliability Must Run Service Agreements (RMR Agreements) with the California Independent System Operator Corporation (ISO) for Helms Power Plant (Helms), PG&E First Revised Rate Schedule FERC No. 207 and San Joaquin Power Plant (San Joaquin), PG&E First Revised Rate Schedule FERC No. 211. This filing revises portions of the Rate Schedules to adjust the values for Contract Service Limits, Owner's Repair Cost Obligation and Prepaid Start-up information. These changes are expressly required and/or authorized under the RMR Agreements.

Copies of PG&E's filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: January 7, 2002.

26. MidAmerican Energy Company

[Docket No. ER02–546–000]

Take notice that on December 17, 2001, MidAmerican Energy Company (MidAmerican), filed with the Federal Energy Regulatory Commission (Commission) a Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement, between MidAmerican, as transmission provider, and Exelon Generation Company, LLC, as transmission customer. The Agreements are dated October 19, 2001 and have been entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of October 19, 2001 for the Agreements and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: January 7, 2002.

27. Virginia Electric and Power Company

[Docket No. ER02–547–000]

Take notice that on December 13, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Powerex Corp. designated as Service Agreement No. 347 under the Company's FERC Electric Tariff, Second Revised Volume No. 5; and Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Powerex Corp. designated as Service Agreement No. 348 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to Powerex Corp. under the rates, terms and conditions of the Open Access Transmission Tariff.

Dominion Virginia Power requests an effective date of November 26, 2001, as requested by the Customer. Copies of the filing were served upon Powerex Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: January 3, 2002.

28. Commonwealth Edison Company

[Docket No. ER02–549–000]

Take notice that on December 12, 2001 Commonwealth Edison Company (ComEd) submitted for filing one Form of Service Agreement for Firm Point-To-Point Transmission Service between ComEd and Exelon Generation Company, LLC (Exelon) and one Form of Service Agreement for Firm Point-To-Point Transmission Service and the associated Network Upgrade Agreement between ComEd and Wisconsin Electric Power Company (WEPCO) under the terms of ComEd's Open Access Transmission Tariff (OATT). Copies of this filing were served on Exelon and WEPCO.

ComEd requests an effective date of January 1, 2002 for the Service Agreement with Exelon and February 1, 2002 for the Service Agreement with WEPCO, and accordingly seeks waiver of the Commission's notice requirements.

Comment Date: January 2, 2002.

29. Tampa Electric Company

[Docket No. ER02–551–000]

Take notice that on December 17, 2001, Tampa Electric Company (TEC) tendered for filing pursuant to section 205 of the Federal Power Act an executed Interconnection and Operating Agreement between TEC and Calpine as a service agreement under TEC's open access transmission tariff.

Comment Date: January 7, 2002.

30. TransEnergie U.S. Ltd.

[Docket No. ER02–552–000]

Take notice that on December 14, 2001, Transnergie U.S. Ltd., on behalf of its to-be-formed project development subsidiary, Harbor Cable Company, LLC (HCC), submitted for filing, pursuant to section 205 of the Federal Power Act, an application requesting that the Commission (1) grant HCC blanket authority to make sales of transmission rights at negotiated rates, and (2) grant certain waivers, in connection with its proposed Harbor Cable transmission interconnector project.

Comment Date: January 4, 2002.

31. Rolling Hills Generating, L.L.C.

[Docket No. ER02–553–000]

Take notice that on December 14, 2001, Rolling Hills Generating, L.L.C. (Rolling Hills) tendered for filing pursuant to rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1.

Rolling Hills intends to sell electric power at wholesale at rates, terms, and conditions to be mutually agreed to with the purchasing party. The Rolling Hills tariff provides for the sale of electric energy and capacity at agreed prices.

Comment Date: January 4, 2002.

32. Foothills Generating, L.L.C.

[Docket No. ER02–554–000]

Take notice that on December 14, 2001, Foothills Generating, L.L.C. (Foothills) tendered with the Federal Energy Regulatory Commission (Commission) for filing pursuant to rule

205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1.

Foothills intends to sell electric power at wholesale at rates, terms, and conditions to be mutually agreed to with the purchasing party. The Foothills tariff provides for the sale of electric energy and capacity at agreed prices.

Comment Date: January 4, 2002.

33. PECO Energy Company

[Docket No. ER02–555–000]

Take notice that on December 14, 2001, PECO Energy Company (PECO) submitted for filing a second Construction Agreement between PECO and Old Dominion Electric Cooperative (ODEC) related to the Rock Springs Electric Generation Facility, designated as Service Agreement 615 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1, to be effective on November 13, 2001. Copies of this filing were served on ODEC and PJM.

Comment Date: January 4, 2002.

34. Reliant Energy Desert Basin, LLC

[Docket No. ER02–557–000]

Take notice that on December 13, 2001, Reliant Energy Desert Basin, LLC (Reliant Energy Desert Basin) tendered for filing a long-term service agreement under its market-based rate tariff.

Comment Date: January 3, 2002.

35. American Transmission Company LLC

[Docket No. ER02–558–000]

Take notice that on December 17, 2001, American Transmission Company LLC (ATCLLC) tendered for filing a Revised Service Agreement No. 79 with technical corrections to the Generation-Transmission Interconnection Agreement for the Point Beach Power Plant between Wisconsin Electric Power Company and ATCLLC. The technical corrections address errors inadvertently overlooked when the Agreement was originally filed.

ATCLLC requests an effective date of December 14, 2001.

Comment Date: January 7, 2002.

36. Michigan Electric Transmission Company

[Docket No. ER02–562–000]

Take notice that on December 13, 2001, Michigan Electric Transmission Company (METC) tendered for filing the following tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1, in order to clarify the reimbursement procedures for certain income tax expenses related to the construction of interconnection facilities under METC's pro forma Generator Interconnection and Operating Agreement, Second Revised Sheet Nos. 140, 167 and 168 and Original Sheet Nos. 140A and 140B.

The sheets are to be effective December 13, 2001. Copies of the filing were served upon the Michigan Public Service Commission.

Comment Date: January 3, 2002.

37. PJM Interconnection, L.L.C.

[Docket No. ER02–563–000]

Take notice that on December 14, 2001, PJM Interconnection, L.L.C. (''PJM'') tendered for filing proposed amendments to section 8.6 of the Appendix to Attachment K of PJM's Open Access Transmission Tariff and to Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to conform the provisions of PJM's interregional congestion pilot program between PJM and the New York Independent System Operator, Inc. (NYISO) to the provisions filed by NYISO in Docket No. ER02–194–000. The proposed amendments provide that mandatory emergency energy sales shall accompany each generation adjustment made under the interregional congestion pilot program. PJM requests an effective date of December 15, 2001 for the amendments.

Copies of this filing have been served on all PJM Members, the NYISO, the state electric utility regulatory commissions in the PJM and NYISO control areas, and the parties on the official service lists in Docket Numbers ER01–2528 and ER02–194–000.

Comment Date: January 4, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32001 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Public Meeting

December 20, 2001.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), which was filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies have asked the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. This meeting is part of that collaborative process. There will be a 3-hour plenary meeting to discuss matters of general interest, followed by a joint meeting of the aquatics/hydrology workgroup and the recreation/socioeconomics/visual resources workgroup. The workgroup meeting will focus on further defining interests and the development of strategies to meet objectives. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in this meeting.

The meeting will be held on Monday, January 14 and Tuesday, January 15, 2002, from 9am until 4pm in the Sacramento Marriott, located at 11211 Point East Drive, Rancho Cordova, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31993 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–4–000]

Electronic Filing and Public Access to Information; Notice of Availability of Submission Software for FERC Form Nos. 2 and 2–A: Annual Report of Major Natural Gas Companies and Annual Report of Non-Major Natural Gas Companies

December 20, 2001.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that it is providing software to the major and non-major natural gas pipelines to prepare both the paper and electronic submissions of the FERC Form No. 2 and Form No. 2–A (Form 2 and 2–A). The software is free of charge and all jurisdictional Form 2 and 2–A respondents are *required* to use it starting with the 2001 submissions due on or before March 31, 2002, for the Form No. 2–A and April 30, 2002, for the Form No. 2. The Commission has not modified the forms and the data required on the current schedules have not changed.

The Form 2 and 2–A submission software is Windows 95/98/2000/NT/XP compatible and will provide benefits to the respondent, the Commission and users of the data. The software will facilitate data entry and database loading, improve data integrity, enhance consistency between the paper and electronic filings, and eliminate the requirement to physically submit the electronic file to the Commission on a diskette or CD. Last year a beta version of the software was used successfully by 47 of 110 Form 2 and 2–A respondents to prepare their year 2000 paper submission and to upload the electronic submission to the Commission via the Internet.

Software distribution, set-up, updates, and submission of the electronic filing will all be accomplished via the Internet. In order to disseminate information on the submission software and to keep interested parties aware of any new developments, we are creating a point-of-contact list for companies that file Form 2 and 2–A. Persons who submit FERC Form 2 and 2–A, either for their company, or as an agent for another company, must first register to receive a Personal Identification Number (PIN). The PIN is required for electronic filing.

To register for a PIN, send an E-mail to Bolton Pierce (*bpierce@ferc.fed.us*) containing the exact legal name of the respondent company, the respondent's address, a contact person's name, phone number and E-mail address. A PIN will be assigned and sent by return E-mail. Instructions for downloading and installing the Form 2 and 2A Submission Software are available at *http://rimsweb2.ferc.fed.us/form2/.* Federal and state agencies and others who wish to access and use the Form 2/2A data may download it without restriction from this same web address.

Respondents who submitted their year 2000 filing with the new software need only send in any changes to their point-of-contact information. If you have questions about the new software, please E-mail them to Bolton Pierce at *bpierce@ferc.fed.us.* Respondents with questions concerning the Form Nos. 2 and 2–A may contact James M. Krug at (202) 208–0419 or Craig A. Hill at (202) 208–0621.

The issuance of this software does not change the paper submission requirements for the forms this year. In addition to using the software to upload the electronic submission to the Commission via the Internet, Form 2–A respondents must also submit an original and two conformed paper copies of a completed form by March 31. Form 2 respondents must submit an original and four paper copies of the completed form by April 30. The original paper version is to be produced by the software.

The Commission has also developed, and made available via the Internet, Form 2 and 2–A ''viewer'' software to allow the public and other interested parties to download, view and print the Form 2 and 2–A data submitted electronically by the respondents for the years 1996 and later. This software was made available on December 19, 2001.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31997 Filed 12–27–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7122–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Final Authorization for Hazardous Waste Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Action (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Final Authorization for Hazardous Waste Management, EPA ICR Number 0969.06, OMB Control Number 2050–0041 (expiration date May 31, 2002.) EPA will use the information collected under this ICR to determine whether a State Hazardous Waste program meets the statutory and regulatory requirements for authorization. Before submitting the ICR to OMB for Review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 26, 2002.

FOR FURTHER INFORMATION OR A COPY CALL: Tony Terrell at EPA, (703) 308–6496, and refer to EPA ICR No. 969.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2001–SA3P–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA H), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically through the Internet to: *rcra-docket@epamail.epa.gov* Comments in electronic format should also be identified by docket number F–2001–SA3P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this action will be kept in paper form and place them in the official record, which also include all comments submitted directly in writing. The official record is the paper record maintained in the RCRA Information Center (the RIC address is listed above this section). Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mailcode 5303W, Washington, DC, 20460. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday,

excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page. This notice and the supporting documents that detail the ICR renewal are also available.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Tony Terrell, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–6496/8638, *terrell.tony@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are authorized to manage the federal Hazardous waste program.

Title: Final Authorization for Hazardous Waste Management Programs, (OMB Control No. 2050–0041, ICR No. 969.) expiring May 31, 2002.

Abstract: In order for a State to obtain final authorization for a State hazardous waste program or to revise its previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of section 3006 of RCRA.

A State with an approved program may voluntarily transfer program responsibilities to EPA by notifying EPA of the proposed transfer, as required by section 271.23. Further, EPA may withdraw a State's authorized program under section 271.23.

State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. In the event that the State is revising its program by adopting new Federal requirements, the State shall prepare and submit modified revisions of the program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority in accordance with section 271.21. If a State is proposing to transfer all or any part of any program from the approved State agency to any other agency, it must notify EPA in accordance with section 271.21 and submit revised organizational charts as required under section 271.6, in accordance with section 271.21. These paperwork requirements are mandatory under § 3006(a). EPA will use the information submitted by the State in order to determine whether the State's program meets the statutory and regulatory requirements for authorization. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automatic electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 632 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information; and transmit or otherwise disclose the information.

Estimated Number of Respondents: 50.

Frequency of Response: 18.

Estimated Total Annual Burden Hours: 11,376 hours.

Estimated Total Annualized Cost Burden: $619,541.

Dated: December 17, 2001.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 01–31941 Filed 12–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34251; FRL–6818–5]

Technical Briefing on the Preliminary Organophosphate Pesticide Cumulative Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing a public technical briefing on January 15, 2002, to discuss the exposure methodologies proposed for use in the organophosphate (OP) cumulative risk assessment for food, drinking water, and residential exposures. The briefing will provide the public with an explanation in non-technical terms of the proposed exposure methodologies. In addition, the briefing will cover how the computer software model calculates and combines these exposure estimates. This briefing follows the August 22, 2001, briefing on the hazard portion of the assessment, the October 3, 2001, briefing on the water exposure methodology, and the November 15, 2001, briefing on the food and residential methodologies. This technical briefing will complete the background briefings on the proposed OP cumulative risk assessment methodology.

DATES: The technical briefing will be held on Tuesday, January 15, 2002, from 9 a.m. to 5 p.m. On Wednesday, January 16, 2002, from 9 a.m. to 4 p.m., EPA and the U.S. Department of Agriculture will hold a public meeting of the CARAT Workgroup on Cumulative Risk Assessment/Public Participation Process.

ADDRESSES: The technical briefing and the CARAT Workgroup Meeting will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA. The telephone number for the hotel is (703) 837–0440. The hotel is located across from the King Street Metro Station.

FOR FURTHER INFORMATION CONTACT: By mail: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphate pesticides, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/. In addition, information about the cumulative process and the preliminary organophosphate cumulative risk assessment documents are found at http://www.epa.gov/pesticides/cumulative.

2. *In person*. The Agency has established an official record under docket control number OPP–34251. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. How Can I Request to Participate in this Meeting?

This meeting is open to the public. Outside statements by observers are welcome. Oral statements will be limited to 3 to 5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so immediately before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address listed in Unit I. of this document.

List of Subjects

Environmental protection, Organophosphate pesticides.

Dated: December 19, 2001.

Lois A. Rossi,

Director, Special Review and Registration Division, Office of Pesticide Programs.

[FR Doc. 01–31937 Filed 12–26–01; 11:01 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7122–6]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Engineering Committee (EEC) of the US EPA Science Advisory Board (SAB) will meet via public teleconference on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office (if any) is included below. Subsequent teleconference meetings of the EEC are planned for March 13, 2002, May 1, 2002, July 3, 2002, September 4, 2002 and November 6, 2002. Information concerning these meetings will appear in future **Federal Register** notices.

1. Environmental Engineering Committee (EEC)—January 30, 2002

The Environmental Engineering Committee of the US EPA Science Advisory Board (SAB), will conduct a public teleconference meeting on January 30, 2002 in Room 6450C location, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin at 12:00 pm and adjourn no later than 2:00 pm. The meeting will be coordinated through a conference call connection in Room 6450C, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Mary Winston (see contact information below).

Purpose of the Meeting

The primary purpose of this meeting will be to review for approval the reports of the EEC's Surface Impoundments Study Subcommittee and the Risk Reduction Options Selection Subcommittee, if available. If the reports are not available, the time will be used to update the EEC on other activities of the SAB and for planning the committee's FY2002 activities. The Surface Impoundments Study Subcommittee reviewed Industrial Surface Impoundments in the United States for the Office of Solid Waste as announced in **Federal Register** notices 66 FR 30917–30920 June 8, 2001 and 66 FR 9671–49672 September 28, 2001. At the request of the Committee, the Risk Reduction Options Selection Subcommittee has prepared an update of the risk reduction options selection methodology first proposed in the SAB's Toward Integrated Environmental Decision-Making (EPA–SAB–EC–00–011—Please see *http://www.epa.gov/sab/ecirp011.pdf*).

Availability of Review Materials

The availability of Industrial Surface Impoundments in the United States was

announced previously in the FRs cited above. The other task is self-initiated and there is no review document.

For Further Information—Please see below.

2. Environmental Engineering Committee (EEC)—January 31, 2002

The Environmental Engineering Committee of the EPA Science Advisory Board (SAB) will conduct a public teleconference meeting on January 31, 2002 between the hours of 12:00 noon and 2:00 pm (Eastern Daylight Time). The meeting(s) will be coordinated through a conference call connection in Room 6450C, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Mary Winston (see below).

Purpose of the Meeting

The purpose of this meeting is for staff from EPA's Office of Research and Development to provide background briefings sufficient for the Committee to *plan* the requested review of the Risk Management Evaluation (RME) Protocol. The review will NOT be conducted on this conference call.

The draft RME Protocol document was developed from the lessons learned and success stories from the focused pilot RME program, as well as from a review of the latest developments in risk management, including from outside of EPA. The draft Protocol provides a structure and format for: (a) Compiling state-of-the-science in risk management and assessment associated with a specific risk or set of risks; (b) identifying, evaluating, and prioritizing promising long-term and short-term risk management options to manage these risks (e.g., control technologies, pollution prevention measures, process modifications, remediation, best management practices, market-based incentives, social and behavioral measures); (c) evaluating feasibility, performance (risk reduction potential), cost, and applicability of these risk management strategies; (d) identifying gaps in the available data; (e) recommending future research efforts to reduce these data gaps; and (f) developing and providing tools/models to evaluate, prioritize and optimize these risk management options and reduce uncertainties in the data.

The overriding purpose of the draft RME Protocol is to formalize a foundation, structure and general approach for NRMRL, other ORD laboratories and centers, and others both within and outside of EPA, to identify areas where knowledge in risk management is currently sufficient to effectively manage risks, versus areas where additional research is required. In this way the Protocol will serve as a tool to assist ORD and other research groups in planning and prioritizing risk management research programs, as well as provide an approach to: (a) Analyze sources of potential, perceived or actual risk; (b) evaluate promising risk management options for adapting, preventing, and reducing these risks; and (c) evaluate the availability, cost and effectiveness of the identified options. It is envisioned that the RME Protocol will provide the basis for developing EPA risk management guidance documents.

Charge to the Subcommittee

The tentative charge, which will be the subject of further discussion and negotiation is:

(a) Is the document clear and internally consistent? Is it written at the proper level of technical depth and complexity? Is it adequately and appropriately referenced?

(b) Is the RME Protocol presented in the document logical, complete, and understandable?

(c) Is the RME Protocol an adequate and effective framework and guide for conducting risk management evaluations (RMEs)?

(d) Based on review of the draft RME Protocol and pilots, are risk management evaluations (RMEs) potentially effective and useful tools for enhancing risk management decisions, whether by EPA or others?

Availability of Review Materials

No review is being conducted at this meeting. The document to be eventually reviewed is still in the draft stages and unavailable to both the Committee and the public. When the review dates are set, an announcement will be published in the FR about the meeting and the availability of review materials. A one-page request for the review can be obtained from Ms. White (see below), or on the SAB website (*www.epa.gov/SAB*) prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning either of these teleconference meetings or who wishes to submit brief oral comments (3 minutes or less) must contact Ms. Kathleen White, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *white.kathleen@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. White no later than noon Eastern Time January 23, 2002. An agenda or information on participation in either of the above teleconference meetings may be obtained from Ms. Mary Winston, Management Assistant, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: (202) 564–4538, FAX (202) 501–0582; or via e-mail at *winston.mary@epa.gov.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function,

and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. White at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 18, 2001.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 01–31940 Filed 12–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34250; FRL–6816–5]

Preliminary Organophosphorous Cumulative Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the preliminary cumulative risk assessment for the organophosphorous pesticides, which was developed as part of EPA's process for tolerance reassessments under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The Agency is interpreting the results of these analyses, therefore, it is too soon to draw firm conclusions about risks or consider risk management possibilities. By allowing access and opportunity for comment on the preliminary risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information.

DATES: Comments, identified by docket control number OPP–34250, must be received on or before March 8, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34250 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; fax number: (703) 308–8005; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

EPA has made the preliminary cumulative risk assessment available on the Internet at the following address: http://www.epa.gov/pesticides/cumulative/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34250. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34250 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34250. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or

all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The preliminary organophosphorous cumulative risk assessment is being made available for comment. The assessment represents a new way of analyzing data about potential exposure to pesticides. The Agency's methods result in measurements of the probability of exposure to more than one organophophorous pesticide and an assessment of such combined exposure. While EPA is interpreting the results of these analyses and the soundness of these methods, it is too soon to draw firm conclusions about risks or consider risk management possibilities. The risk mitigation measures that have already been taken on individual members of this group of pesticides have led to significant reduction in potential risk, and EPA is continuing to address risks as they are identified. The Agency has confidence in the methods used to generate the results given the numerous scientific reviews conducted before completion of this preliminary cumulative risk assessment. Based on this analysis, EPA continues to have confidence in the overall safety of our food supply and emphasizes the importance of eating a varied diet rich in fruits and vegetables. Pesticide residues in drinking water do not appear to be a major contributor to risk. Although most indoor uses of organophophorous pesticides have been eliminated through earlier risk reduction actions, a few remaining uses may be re-evaluated.

List of Subjects

Environmental protection, Agricultural commodities, Chemicals, Pesticides and pests.

Dated: December 19, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–31938 Filed 12–27–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 13, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 23, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0391.

Title: Program to Monitor the Impacts of the Universal Service Support Mechanism, CC Docket Nos. 98–2002 and 96–45.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 900 respondents; 1,439 responses.

Estimated Time Per Response: 40 minutes to 1.5 hours.

Frequency of Response: Annual reporting requirement and third party disclosure requirement.

Total Annual Burden: 1,716.

Total Annual Cost: N/A.

Needs and Uses: The Commission has a program to monitor the impacts of the universal service support mechanisms. The program requires periodic reporting by telephone companies and the universal service administrator. The information is used by the Commission, Federal-State Joint Boards, Congress, and the general public to assess the impacts of the decisions of the Commission and Joint Boards. This information collection has been revised because several data elements contained in the monitoring program were eliminated due to access reform.

OMB Control No.: 3060–0823.

Title: Pay Telephone Reclassification, Memorandum Opinion and Order, CC Docket No. 96–128.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Numbers of Respondents: 400.

Estimated Time Per Response: 2 to 35 hours.

Frequency of Response: On occasion reporting requirement; recordkeeping requirement; and third part disclosure requirement.

Total Annual Burden: 400 hours.

Total Annual Cost: $480,000.

Needs and Use: In the Memorandum Opinion and Order issued in CC Docket No. 96–128, the Commission clarified requirements established in the Payphone Orders for the provision of payphone-specific coding digits by LECs and PSPs, to IXCs, beginning October 7, 1997. Specifically, the Order clarified that only FLEX ANI complies with the requirements; required that LECs file tariffs to FLEX ANI as a nonchargeable option to IXCs; required that LECs file tariffs to recover costs associated with implementing FLEX ANI; and grants permission and certain waivers. This is an extension of a currently approved collection. The Commission is seeking approval to extend this collection for three years, as required by the Paperwork Reduction Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–31863 Filed 12–27–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

December 12, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION

OMB Control Number: 3060–0053.

Title: Application for Consent to Transfer of Control of Corporation Holding Station License.

Form Number: FCC Form 703.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 40.

Estimated Time Per Response: 36 mins.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 24 hrs.

Total Estimated Cost: $2,000.

Needs and Uses: The Communications Act of 1934, as amended, and 47 CFR 5.59 of FCC Rules require applicants for Experimental Radio Services to submit FCC 703 when they propose to change, via a transfer of stock ownership, the control of a station. This information is used to determine eligibility for licenses, without which, violations of ownership regulations may occur. The FCC has made various revisions to Form 703: (1) Expiration date was deleted; (2) public coast and common carrier Alaska public fixed stations questions were removed; (3) fee multiple was deleted; (4) ''FOR FCC USE ONLY'' field was removed; (5) fields were added for the transferee's address and contact information to include an ''Attention'' field; (6) field labeled ''FCC Registration Number (FRN)'' was added; (7) Internet URL address was added; (8) references to item numbers were changed to match the change in the form numbering; (9) instructions pertaining to FCC Forms 159 and 160 were added; (11) only Experimental Radio Service regular and courier addresses are given; and (12) instructions were revised.

OMB Control Number: 3060–0057.

Title: Application for Equipment Authorization, 47 CFR Sections 2.911, 2.925, 2.932, 2.944, 2.960, 2.1033(a), and 2.1043.

Form Number: FCC 731.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,600.

Estimate of Time Per Response: 24 hrs. (avg.)

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 134,400.

Total Annual Costs: $1,120,000.

Needs and Uses: Under sections of 47 CFR parts 15 and 18 of FCC Rules, regulated equipment must comply with the FCC's technical standards before it is approved for marketing. Rules governing certain equipment operating in the licensed service also require equipment authorization under 47 CFR part 2. On September 13, 2001, the FCC adopted a First Report and Order, ET Docket No. 00–47, that established a ''Class III Permissive Change.'' Manufacturers can now make changes affecting the frequency, power, and modulation parameters of software defined radios without having to file a new equipment authorization application. However, new software can not be loaded into radios until the FCC or a designated Telecommunications Certification Body (TCB) approves the manufacturer's software changes and test data showing compliance with FCC technical standards using the new software. In addition, the FCC now allows ''electronic labeling'' for software defined radio transmitters'a liquid crystal display or similar screen displays the FCC identification number.

OMB Control Number: 3060–0805.

Title: Section 90.523, Eligibilty; Section 90.527, Regional Plan Requirements, and Section 90.545, TV/DTV Interference Protection Criteria.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 26,656.

Estimated Time per Response: 0.25 hrs. to 10,000 hrs.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 647, 675.

Total Annual Costs: None.

Needs and Uses: The First Report and Order, FCC 98–191, in WT Docket No. 96–86, amended service rules to make the spectrum available for licensing public safety entities. To satisfy local and regional needs and preferences, the FCC has required submission of regional plans drafted by planning committees made up of representatives from the public safety community. Creation of these plans necessarily imposes some burden, both on the eligible entities that make their needs known and on planners who seek to accommodate them.

OMB Control Number: 3060–0934.

Title: Application for Equipment Authorization, 47 CFR Sections 2.925, 2.932, 2.944, 2.960, 2.962, 2.1043, 68.160, and 68.162.

Form Number: FCC TCB 731.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 25.

Estimated Time Per Response: 4 hrs.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 6,400 hrs.

Total Annual Cost: $175,000.

Needs and Uses: Under 47 CFR parts 15 and 18 of FCC Rules, certain equipment must comply with FCC technical standards before it can be marketed. Equipment that operates in the licensed service requires FCC authorization under 47 CFR parts 2 and 68. Since its 1998 Report and Order, Docket No. 98–68, the FCC has permitted a private sector firm or ''Telecommunications Certification Body'' (TCB) to approve equipment for marketing and has also established guidelines for ''Mutual Recognition Agreements'' with foreign trade partners. Once approved by the accrediting body and ''designated'' by the FCC, TCBs may accept Form 731 filings and evaluate the equipment's compliance with FCC Rules and technical standards. TCBs submit this information to the FCC via the Internet. On September 13, 2001, the FCC adopted a First Report and Order, ET Docket No. 00–47, that established a ''Class III Permissive Change'' to permit manufacturers to make changes affecting frequency, power, and modulation parameters of ''software defined radios'' without having to file a new equipment authorization application. The manufacturer must submit a description of the software changes to the FCC or a designated TCB. The FCC permits ''electronic labeling'' to be used on software defined radio transmitters.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–31862 Filed 12–27–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Seventh Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on January 30, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: January 30, 2002; 10:00 am–12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Planning and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the seventh meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the seventh meeting is as follows:

Agenda

Seventh Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554

January 30, 2002; 10:00 am–12:00 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Sixth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 01–31866 Filed 12–27–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2521]

Petition for Reconsideration of Action in Rulemaking Proceeding

December 17, 2001.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by January 14, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotment (MM Docket No. 01–107).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–31861 Filed 12–27–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the

Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011528–020.

Title: Japan-United States Eastbound Freight Conference.

Parties:

American President Lines, Ltd.

Hapag-Lloyd Container Line GmbH

Kawasaki Kisen Kaisha, Ltd.

Mitsui O.S.K. Lines, Ltd.

A. P. Moller-Maersk Sealand

Nippon Yusen Kaisha

Orient Overseas Container Line Limited

P & O Nedlloyd B.V.

P & O Nedlloyd Limited

Wallenius Wilhelmsen Lines A.S.

Synopsis: The proposed agreement modification extends the suspension of the conference for another six-month period, until July 31, 2002.

Agreement No.: 011784.

Title: Indamex/TSA Bridging Agreement.

Parties: The Indamex Agreement, and The Transpacific Stabilization Agreement.

Synopsis: The proposed agreement authorizes the parties and their member lines to exchange information and to discuss and reach non-binding agreement on various matters including rates, charges, rules, and equipment in the trade from India, Pakistan, Bangladesh, and Sri Lanka to the United States East Coast. The agreement does not authorize common tariffs or service contracts, but does authorize the parties to discuss and agree on voluntary guidelines related to service contracts.

Agreement No.: 200233–011.

Title: Packer Avenue Lease and Operating Agreement.

Parties: Philadelphia Regional Port Authority, and Astro Holdings, Inc.

Synopsis: The proposed amendment extends the agreement through June 1, 2002.

Dated: December 21, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–31953 Filed 12–27–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 10, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Estate of Oscar W. Roberts, Jr., Carrollton, Georgia; Louise T. Roberts, Carrollton, Georgia; Antoinette Roberts Goodrich; Marion, Virginia; Heather Roberts, Carrollton, Georgia; Oscar W. Roberts, III; Cleveland, Georgia; Helen T. Roberts, Atlanta, Georgia; Alfred F. Goodrich, Carrollton, Georgia; Bonita J. Roberts; Carrollton, Georgia; Oscar W. Roberts, IV, Carrollton, Georgia; Eleanor R. Goodrich, Carrollton, Georgia; Thomas T. Richards, Carrollton, Georgia; J. Patrick Malloy, Carrollton, Georgia; Sally A. Bobick, Carrollton, Georgia; Mary A. Maierhoffer, Carrollton, Georgia; Cornelia S. Richards, Carrollton, Georgia; Margaret R. Bass, Albany, Georgia; Cornelia L. Richards, New York, New York; Margaret R. Bass Trust, Carrollton, Georgia; Cornelia L. Richards Trust, Carrollton, Georgia; Estate of H.W. Richards, Carrollton, Georgia; Joe W. Walker, Carrollton, Georgia; Jan W. Walker, Carrollton, Georgia; Katherine M. Chewning, Carrollton, Georgia; Nicholas C. Walker, Carrollton, Georgia; Katherine R. Walker, Carrollton, Georgia; Wanda W. Calhoun, Carrollton, Georgia; Madeline A. Chewning, Carrollton, Georgia; Whitney L. Walker, Carrollton, Georgia; Greg W. Walker, Carrollton, Georgia; H. Frederick Walker, Carrollton, Georgia ; and Ross A. Chewning, Carrollton, Georgia; all to retain voting shares of WGNB Corp., Carrollton, Georgia, and thereby indirectly retain voting shares of West Georgia National Bank of Carrollton, Carrollton, Georgia.

Board of Governors of the Federal Reserve System, December 20, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–31876 Filed 12–27–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. South Alabama Bancorporation, Inc., Mobile, Alabama; to merge with Gulf Coast Community Bancshares, Inc., Wewahitchka, Florida, and thereby indirectly acquire Wewahitchka State Bank, Wewahitchka, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411

Locust Street, St. Louis, Missouri 63166–2034:

1. Hardin County Bancorp, Inc., Rosiclare, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Rosiclare, Rosiclare, Illinois.

Board of Governors of the Federal Reserve System, December 20, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–31875 Filed 12–27–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Remedial Use of Disgorgement

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice; request for comments.

SUMMARY: The Commission is requesting comments on the use of disgorgement as a remedy for violations of the Hart-Scott-Rodino (HSR) Act, FTC Act and Clayton Act.

DATES: Comments must be received by March 1, 2002.

ADDRESSES: Public comments are invited, and may be filed with the Commission in either paper or electronic form. An original and one (1) copy of any comments filed in paper form should be submitted to the Document Processing Section, Office of the Secretary, Room 159–H, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *disgorgementcomment@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: John Graubert, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2186, *jgraubert@ftc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has considerable experience with the use of monetary equitable remedies in consumer protection cases. In contract, the Commission has considered disgorgement or other forms of monetary equitable relief in fewer competition matters and obtained disgorgement in two recent matters, *FTC* v. *Mylan Laboratories, et al.* and *FTC* v. *The Hearst Trust et al.* The Commission accordingly solicits comments on the factors the Commission should consider in applying this remedy and how disgorgement should be calculated. The Commission is not re-examining its statutory authority to seek disgorgement or other monetary equitable relief in competition cases.

Comments may address any or all of the following questions. However, other, related comments are also welcome:

1. Are there particular violations of the Clayton Act, the HSR Act, the competition provisions of the FTC Act, or final orders of the Commission in competition cases where disgorgement would be especially appropriate or, in contrast, less useful? Should the resort to disgorgement depend on whether, in conjunction with an HSR Act violation or order violation, the underlying transaction or conduct constitutes an illegal acquisition under section 7 of the Clayton Act, or constitutes monopolization or attempted monopolization under section 5 of the Federal Trade Commission Act?

2. How should the Commission calculate the amount of disgorgement appropriate for particular law violations under each of the statutes? For example, if the Commission sought disgorgement for violations of the HSR Act, how should disgorgement be calculated when the unlawful gain includes (or consists solely of) tax savings, stock market profits, or other gain not directly related to antitrust injury? Should disgorgement be calculated to remove all profits earned from the acquisition, all profits attributable to antitrust harm, or some other approach? How should the Commission assess benefits obtained in an unlawful acquisition, or other transaction, that do not flow directly from immediate injury to customers, *e.g.,* where the violator reduces its investments in future technology because of a reduction in the competition it faces? Is the approach used to calculate disgorgement in *S.E.C.* v. *First City Financial Corporation, Ltd.,* 890 F.2d 1215 (D.C. Cir. 1989), appropriate for the Commission's use?

3. What other factors should the Commission consider in determining whether to seek disgorgement? How should the Commission weight and what is the relevance to the Commission of the following factors in determining whether to seek disgorgement: (i) The impact that seeking such a remedy may have on other aspects of any settlement negotiations, *e.g.,* delay in obtaining divestiture or other structural relief; (ii) the adequacy of other forms of relief (including civil penalties); (iii) the egregiousness of the conduct at issue; (iv) the extent of harm to the market generally or to indirect purchasers who may be unable to pursue a claim; (v) the ability of an affected party to secure relief independently of the Commission, *e.g.,* by private actions; (vi) the advantages or disadvantages of litigation in federal court rather than in an administrative proceeding; and (vii) the possible tradeoff between addressing past harm more thoroughly (through disgorgement) and an interest in obtaining relief quickly (through a conduct or structural remedy) so as to limit the effects of a continuing violation?

4. Should pending or potential private litigation, actions by state attorneys general, or civil or criminal prosecution by the Antitrust Division of the Department of Justice, affect the Commission's decision to seek disgorgement? Is this decision any different from the Commission's decision to seek other equitable relief, *e.g.,* divestiture, in cases where other related private or public litigation exists or its possible? Will Commission disgorgement claims encourage or discourage the decision of private parties or states to bring or continue litigation, or settlement negotiations, in such cases? If so, what would the ultimate effect on consumer welfare be under each such scenario?

5. In light of the fact that disgorgement and restitution have distinct theoretical underpinnings and equitable rationales, are there circumstances in competition cases in which one or the other of these remedies is more appropriate? What are the considerations that should inform such decisions?

6. When and how should disgorgement funds recovered by the Commission be distributed as restitution when there is parallel private litigation? For example, should any recovery of disgorgement or restitution by the Commission affect the calculation of or be used to pay attorney's fees in parallel litigation, and, if so, in what way? In any restitution program, how should direct and indirect purchasers be treated? How should the Commission proceed if its own action and parallel private action are not consolidated before a single judge?

The Commission is also interested in learning about parties' experiences in analogous circumstances involving disgorgement with other federal or state agencies and in other enforcement areas.

By direction of the Commission.

Dated: December 19, 2001.

Donald S. Clark,

Secretary.

[FR Doc. 01–31885 Filed 12–27–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0002]

INA-Holding Schaeffler KG, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Nick Koberstein, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2743.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 21, 2001), on the World Wide Web, at *''http://www.ftc.gov/os/2001/12/index.htm.''* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from INA-Holding Schaeffler KG (''INA'') and FAG Kugelfischer Georg Schäfer AG (''FAG''), which is designed to remedy the anticompetitive effects resulting from INA's acquisition of FAG. Under the terms of the Consent Agreement, INA and FAG will be required to divest FAG's cartridge ball screw support bearing (''CBSSB'') business. FAG's CBSSB business will be divested to Aktiebolaget SKF (''SKF''), and will take place no later than twenty (20) business days from the date on which INA begins its acquisition of FAG.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order.

Pursuant to a cash tender offer announced on September 13, 2001, INA proposes to acquire all of the outstanding shares of FAG. The total value of the transaction is approximately $650 million. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the worldwide market for the research, development, manufacture and sale of CBSSBs.

FAG and INA are the only two suppliers of CBSSBs in the world. CBSSBs are critical components in many industrial machine tools, and are utilized by machine tool original equipment manufacturers (''OEMs'') around the world. Machine tools are machines that are used in the production of other equipment, and include grinding machines, milling machines, and laser drilling and cutting systems. Machine tool OEMs utilize CBSSBs to reduce the friction associated with the rotation of a rolling screw. This rotation is used to control linear motion for accurate positioning, and is vital to the proper functioning of certain machine tools. Although other types of bearings can be used to accomplish this purpose, CBSSBs are easier, less expensive, and less time intensive to use than the potential alternatives. CBSSBs also allow end users of machine tools to replace the bearings easily, quickly and without incurring substantial cost. Moreover, once a machine tool is designed with CBSSBs, the process of switching to an alternative type of bearing would require a costly and time consuming redesign of the tool. For these reasons, it is highly unlikely that OEMs, or end users, would switch from CBSSBs to alternative technologies even if CBSSB prices increased significantly.

The global market for CBSSBs is highly concentrated. If the proposed acquisition is consummated, the combined firm would monopolize the worldwide market for CBSSBs. Prior to the acquisition, INA and FAG frequently competed against each other for CBSSB business, and this competition benefitted CBSSB customers. By eliminating competition between the two competitors in this highly concentrated market, the proposed acquisition would allow the combined firm to exercise market power unilaterally, thereby increasing the likelihood that purchasers of CBSSBs would be forced to pay higher prices and that innovation, service levels, and product quality in this market would decrease.

There are significant impediments to new entry into the CBSSB market. A new entrant into the CBSSB market would need to undertake the difficult, expensive and time-consuming process of researching and developing a line of CBSSB products, acquiring the necessary production assets, and developing the expertise needed to

successfully design, manufacture, and market these products. It would take a new entrant over two years to accomplish these steps and achieve a significant market impact. Additionally, new entry into the CBSSB market is unlikely to occur because the costs of entering the market and producing CBSSBs are high relative to the limited sales opportunities available to new entrants.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the worldwide market for CBSSBs by requiring INA and FAG to divest FAG's CBSSB business. This business consists of, among other things, FAG's specialized tooling equipment, technical drawings, advertising and training materials, customer lists, and other assets used in the research, development, manufacturing, quality assurance, marketing, customer support and sale of CBSSBs (collectively ''CBSSB Assets''). Pursuant to the Consent Agreement, INA and FAG are required to divest the CBSSB Assets to SKF within twenty (20) business days from the date on which INA begins its acquisition of FAG. If the Commission determines that SKF is not an acceptable buyer or that the manner of the divestiture is not acceptable, INA and FAG must rescind the sale to SKF within three (3) business days, and divest the CBSSB Assets to a Commission-approved buyer within three (3) months. If INA and FAG have not divested the CBSSB Assets within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets and any additional FAG machinery that the trustee deems appropriate, subject to Commission approval.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems. The Commission is satisfied that SKF is a well-qualified acquirer of the divested assets. SKF is a publicly-traded Swedish corporation and the largest supplier of ball and roller bearings worldwide. SKF has been active in the bearings industry since 1907, and currently has production sites in 22 countries around the world and sales activities in almost every country in the world. SKF is also a current producer of ball screw support bearings, the product from which CBSSBs were originally derived. Thus, SKF has the necessary industry expertise to manufacture and sell CBSSBs, and its entry into the CBSSB market will effectively replace the competition being eliminated by INA's acquisition of FAG. Furthermore, SKF does not pose separate competitive issues as the acquirer of the divested assets.

The Consent Agreement includes a number of provisions that are designed to ensure that the divestiture of the CBSSB Assets is successful. The Consent Agreement requires that, for a period of six (6) months, INA and FAG provide SKF with personnel, assistance, and training at no cost to SKF. This provision will ensure that SKF is able to effectively manufacture and market CBSSBs of the same quality as those currently produced by FAG. Additionally, if requested by SKF, INA and FAG are required to provide transitional manufacturing services at variable cost to SKF for up to six (6) months. This will ensure that SKF is able to serve customers in the CBSSB market without delay. In order to further facilitate SKF's entry into the CBSSB market, the Consent Agreement also prohibits INA and FAG from using any catalog numbers currently used by FAG to identify its CBSSBs.

To preserve the competitive viability and independence of the CBSSB Assets pending divestiture, the Consent Agreement includes an Order to Maintain Assets. This Order contains a number of provisions designed to ensure that the viability, competitiveness, and marketability of the CBSSB Assets and other FAG machinery are not diminished. The Order to Maintain Assets also provides that the Commission may appoint one or more monitors to ensure that INA and FAG expeditiously comply with their obligations under the Consent Agreement.

In order to ensure that the Commission remains informed about the status of the pending divestiture, and about efforts being made to accomplish the divestiture, the Consent Agreement requires INA and FAG to file an initial status report with the Commission within ten (10) days of the date the Consent Agreement is executed, and additional reports every thirty (30) days thereafter until the Commission's Decision and Order becomes final. Once the Commission's Order becomes final, INA and FAG have sixty (60) days within which to submit a verified written report detailing the manner in which they have complied, or intend to comply, with the Commission's Order. This reporting requirement continues until INA and FAG have fully complied with the Commission's Order.

In addition to the divestiture outlined above, the Commission's Order also addresses potential competitive issues raised by a possible future joint venture between FAG and NTN Corporation of Japan (''NTN''), another large producer of bearings worldwide. Although no joint activities have taken place to date, a preliminary agreement between FAG and NTN indicates that a wide range of possible joint marketing, joint production and joint sales activities are contemplated by the joint venture between the two companies. INA has publicly asserted that it welcomes the alliance with NTN and is prepared to continue this cooperation with NTN after INA's acquisition of FAG. Given that this scenario creates the possibility of a future global three-firm alliance, and given that such joint venture activities may not otherwise trigger Hart-Scott-Rodino reporting requirements, the Commission's Order requires INA and FAG to provide prior notice to the Commission before entering into any such joint venture activities with NTN affecting North America. This requirement will give the Commission an opportunity to review such activities for potential competitive harm before they take place.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–31912 Filed 12–27–01; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–259]

Federal Buildings and Space

This notice contains GSA Bulletin FPMR D–259 which announces the designation of a park on Federal grounds. The text of the bulletin follows:

To: Heads of Federal Agencies

Subject: Designation of Federal Building Grounds

1. *Purpose.* This bulletin announces the designation of a park on Federal grounds.

2. *Expiration date.* This bulletin expires May 11, 2002. However, the Federal building grounds designation announced by this bulletin will remain in effect until canceled or superseded.

3. *Designation.* The grounds directly in front of the John M. Shaw United States Courthouse in Lafayette,

Louisiana, to be used as a park, are designated as follows: Richard J. Putnam Park, on the grounds of the John M. Shaw United States Courthouse, 800 Lafayette Street, Lafayette, LA 70501.

Dated: December 19, 2001.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 01–31883 Filed 12–27–01; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4021–GNC]

RIN 0938–ZA22

Medicare Program; Criteria and Standards for Evaluating Intermediary, Carrier, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carrier Performance During Fiscal Year 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries, carriers, and DMEPOS regional carriers in the administration of the Medicare program beginning the first day of the month following publication in the **Federal Register**. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary agreement, carrier contract, or DMEPOS regional carrier contract or take other contract actions, for example, assigning or reassigning providers or services to an intermediary or designating regional or national intermediaries. The criteria and standards for DMEPOS regional carriers (also referred to as Durable Medical Equipment Regional Carriers (DMERCs)) were previously published under a separate **Federal Register** notice, but with this release will now be incorporated in the notice of criteria and standards for the intermediaries and carriers. We are requesting public comment on these criteria and standards.

EFFECTIVE DATE: The criteria and standards are effective January 2, 2002.

COMMENTS: Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. (EDT) on January 28, 2002.

ADDRESSES: In commenting, please refer to file code CMS–4021–GNC. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission. Mail written comments (one original and three copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4021–GNC, P.O. Box 8016, Baltimore, MD 21244–8016.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201 or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–8016.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sue Lathroum, (410) 786–7409.

SUPPLEMENTARY INFORMATION

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

I. Background

A. Part A—Hospital Insurance

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with us. These agencies or organizations, known as fiscal intermediaries, determine whether medical services are covered under Medicare, determine correct payment amounts and then make payments to the health care providers (for example, hospitals, skilled nursing facilities (SNFs), community mental health centers, etc.) on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement. Evaluations of Medicare fee-for-service performance need not be limited to the current fiscal year (FY), other fixed term basis, or agreement term. We may evaluate performance using a time frame that does not mirror the FY or other fixed term. The evaluation of intermediary performance is part of our contract management process.

B. Part B Medical Insurance

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the amount payable for the services or supplies, and then make payment to the appropriate party.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. Evaluations of Medicare fee-for-service performance need not be limited to the current FY, other fixed term basis, or contract term. We may evaluate performance using a timeframe that does not mirror the FY. The evaluation of carrier performance is part of our contract management process.

C. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

In accordance with section 1834(a)(12) of the Act, CMS has entered into contracts with four DMEPOS regional carriers to perform all of the duties associated with the processing of claims for DMEPOS, under Part B of the Medicare program. These DMEPOS regional carriers process claims based on a Medicare beneficiary's principal residence by State. Section 1842(a) of the Act authorizes contracts with carriers for the payment of Part B claims for Medicare covered services and items. Section 1842(b)(2) of the Act requires us to publish in the **Federal Register** criteria and standards for the efficient and effective performance of carrier contract obligations. The criteria and standards to be used for evaluating the performance of DMEPOS regional carriers were first published on June 18, 1992 at 57 FR 27302. The evaluation of DMEPOS regional carrier performance is part of our contract management process.

D. Development and Publication of Criteria and Standards

In addition to the statutory requirements, 42 CFR 421.120 and 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries prior to implementation. Section 421.201 provides for publication of a **Federal Register** notice to announce criteria and standards for carriers prior to implementation. The current criteria and standards for intermediaries and carriers were published in the **Federal Register** on October 31, 2000 at 65 FR 64968 and for DMEPOS regional carriers on January 26, 1996 at 61 FR 2516.

To the extent possible, we make every effort to publish the criteria and standards before the beginning of the Federal FY, which is October 1. If we do not publish a **Federal Register** notice before the new FY begins, readers may presume that until and unless notified otherwise, the criteria and standards that were in effect for the previous FY remain in effect.

In those instances in which we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the FY, we may publish the criteria and standards notice at any subsequent time during the year. If we publish a notice in this manner, the evaluation period for the criteria and standards that are the subject of the notice will be effective on the first day of the first month following publication. Any revised criteria and standards will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

It is not our intention to revise the criteria and standards that will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of administrative action or congressional mandate, there may be a need for changes that have a direct impact on the criteria and standards previously published, or that require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. If we must make these changes, we will publish a **Federal Register** notice prior to implementation of the changes. In all instances, necessary manual issuances will be published to ensure that the criteria and standards are applied uniformly and accurately. Also, as in previous years, this **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

II. Analysis of and Response to Public Comments Received on FY 2001 Criteria and Standards

In response to the October 31, 2000 **Federal Register** general notice with comments, we received comments from 12 entities or individuals. We acknowledge and thank each respondent for submitting comments. All comments were reviewed, but none necessitated our reissuance of the FY 2001 Criteria and Standards. Not all comments submitted pertained specifically to the FY 2001 Criteria and Standards. Medicare program components were advised of the concerns as appropriate. When warranted, revisions have been incorporated in this **Federal Register** notice. We are responding to the following performance evaluation issues:

Comment: We were asked to clarify the time frames of 45 days for Standard 4 and 120 days for Standard 5 under the Customer Service criterion for carriers.

Response: Sections 1842(b)(2)(B)(i) and (ii) of the Act specifies time frames for carriers to complete review determinations and to make hearing decisions. A review determination is to be completed within 45 days after the date of a request. A hearing decision is to be made within 120 days after the date of receipt of a request. The date of receipt is the date the request is received and date stamped in the contractor's mailroom.

Comment: A commenter advised us of their concern about what they feel is the inconsistent manner in which the DMERCs conduct medical review. We were asked to instruct the DMERCs on what constitutes appropriate medical record review regarding suppliers, facilities, and physicians, and to instruct the DMERC to take into account that suppliers are not the appropriate conduits for medical record review. Further, we were asked to develop standards to ensure that DMERCs comply with these instructions.

Response: We must hold the entity receiving Medicare payments accountable for providing documentation that supports that services and equipment are covered by the Medicare program. The law requires physicians or practitioners ordering certain services and equipment to provide suppliers with this information to support claims payments.

Comment: Several commenters advised us that there seemed to be a discrepancy between the All Trunks Busy (ATB) internal rate, under the Customer Service criterion for carriers Standard 1, published in the October 31, 2000 **Federal Register** notice and the ATB internal rate in CMS' FY 2001 Budget and Performance Requirements (BPRs) for contractors. The October 31, 2000 **Federal Register** notice states, ''Carriers are to achieve a monthly ATB rate of not more than 10%.'' In contrast, the FY 2001 BPRs states the monthly ATB rate ''shall average 10%.''

Response: The BPRs changed during FY 2001. The commenter is correct in noting a difference between the BPRs ATB internal rate and the ATB internal rate published in the **Federal Register**. However, we want to assure the commenter that we conducted Contractor Performance Evaluation (CPE) reviews based on the BPRs. If any contractor was evaluated earlier in the fiscal year on the basis of a BPR requirement that was subsequently changed, CMS subsequently reevaluated its performance against the latest BPR requirements. When necessary, revised CPE reports were issued to reflect our evaluation changes.

Comment: Commenters asked several questions concerning issues under section VII, Action Based on Performance Evaluations of the FY 2001 notice. The questions are as follows: CMS refers to the possibility of contractors (manipulating data in order to receive a ''more favorable performance evaluation.)'' How does the intermediary or carrier obtain a more favorable evaluation? How will the affected public know whether a contractor ''meets the level of performance required?'' Will the contractor's annual performance reports, referred to in paragraph three, be made available to the affected public?

Response: Many standards established for contractors, including some mandated ones specified in each year's **Federal Register** notice, rely on data submitted to the CMS Contractor Reporting of Operational and Workload Data Database. If a contractor manipulates data to reflect quicker processing of appeals or changes a claim identified as clean to be one identified as other than clean, the contractor's actions could result in more favorable timeliness data for those workloads. Because we identified only those performance standards, which are mandated by law, regulations, or judicial decision and provide examples of some other possible standards, we believe we have minimized the situations in which contractors are certain of the precise methodology by which we evaluate them.

The public may request CPE review reports through the Freedom of

Information Act, but we do not normally publish information on the findings of our performance evaluations.

Comment: A commenter stated, ''We understand that the numerical CPEP requirements of past years, for example, an old requirement that intermediaries find $5.99 to $7.99 in disallowance for every dollar they received to perform medical review and utilization review, have been eliminated.'' ''Clearly something has been substituted for the old ''quotas''.'' ''We ask that CMS make this information available to the affected public.'' ''Many providers have the perception that CMS still requires its contractors to meet some sort of numerical ratios and/or that the contractors are free to set up their own quotas and reward system.''

Response: CMS does not require contractors to meet savings quotas or targets, nor have reward systems. Instead, CMS assesses contractor activities that support the accomplishment of core performance standards specified in the annual Budget and Performance Requirements for medical review. These activities include, for example, workload management and data analysis.

Comment: One commenter stated that Medicare intermediary workload data from some recent years showed that approximately 35–40 percent of intermediary denials of home health or hospice care were reversed by Administrative Law Judges (ALJs) after reconsideration determinations by intermediaries. The commenter believes that, in light of CMS' definition of an acceptable reversal rate, this past data on reversals is quite disturbing. Home health intermediaries should be held accountable to the standards and criteria established by CMS.

Response: Certain intermediaries have as an amendment to their contract the responsibility to serve as a Regional Home Health Intermediary (RHHI). This means that in addition to processing claims from hospitals and skilled nursing facilities they are also responsible for claims and appeals from home health agencies and hospices. The mandate for intermediaries to have an acceptable ALJ reversal rate of their determinations applies to the full range of claims determinations which may be appealed to the ALJ level. That is, the determination of acceptable is not based solely on ALJ decisions concerning home health claims for intermediaries designated as RHHI's. As a result, the data applicable to only reversals of home health and hospice claims is not reflective of the data CMS uses to evaluate this standard.

Comment: Commenters stated that the use of the verbiage, ''criterion may include, but is not limited to * * *'' specific items, appears to broaden the scope of CMS' contractor performance evaluation by indicating that the five criteria can be expanded. The commenter believes that in a year of tight contractor funding, CMS should be more focused in its directions to carriers and intermediaries and indicate standards for activities that must be performed regardless of budgeted levels. This will allow contractors to prioritize activities within funding constraints.

Response: In the general criteria and standards we state the goal of the contractor performance evaluation is to ensure that contractors meet their contractual obligations. To ensure that contractors are meeting their contractual obligations we have established criteria and standards that are mandated or authorized by law, regulation, judicial decision, contract, or administration directives. We take into consideration the BPRs, any changes to them, and any abatements. It is not our intention to evaluate performance for which a contractor is not budgeted.

Comment: A commenter noted that in the Actions Based on Performance Evaluations section we state, ''In addition, if the cost incurred by the intermediary or carrier to meet its contractual requirements exceeds the amount that we find to be reasonable and adequate to meet the cost that must be incurred by an efficiently and economically operated intermediary or carrier, these high costs may also be grounds for adverse action.'' The commenter states CMS should identify and ensure that contractors report costs accurately within each activity and ensure that there is consistent performance activities across the contractor community. This will allow effective contractor comparisons.

Response: CMS budget staff, who review contractor cost reporting and budget expenditures, review the overall spending associated with contractors' work. Additionally, CMS' functional components may include in their protocols an evaluation of the appropriateness of spending for the work performed.

Comment: A commenter recommended that until Administrative Law Judges (ALJs) are required to follow CMS manuals, the standard for intermediaries to not have more than 5.0 percent of appeals determinations reversed by ALJs should be removed.

Response: Section 1816 (f)(2)(A)(ii) of the Act requires that CMS evaluate ''the extent to which such agency's or organization's determinations are reversed on appeal.'' In response to this requirement, CMS has defined an acceptable reversal rate by ALJs as one that is at or below 5.0 percent. We recognize that ALJs act independently. As we evaluate this standard we take into consideration whether the ALJ followed Medicare laws, regulations, and/or CMS program manuals.

Comment: Commenters stated that while the preamble mentions provider education as an element for evaluation under the Customer Service criterion it is unclear in the standards whether intermediaries are being evaluated on responsiveness to providers or just to beneficiaries.

Response: We agree that clarification is needed. With this notice we have specified that intermediaries may be evaluated on their responsiveness to providers as well as to beneficiaries.

Comment: One commenter expressed disappointment that the details of the FY 2001 process, while containing a number of objectively measured standards, depended heavily upon the subjective judgements of the individuals who would perform the reviews.

Response: We acknowledge that there were criteria and standards that permitted reviewers to make more subjective determinations concerning acceptableness of performance. We are working to decrease the number of these standards.

Comment: A commenter noted that the background portion of Section I indicated CMS may evaluate contractors' performance using a time frame that does not mirror the fiscal year or other fixed term. This means that the criteria and standards do not necessarily pertain to work performed during FY 2001, but rather to evaluations performed during that time. The concern is that a lack of a uniform time frame for the work being evaluated adds further to the subjectivity, imprecision, and variability that characterize the ''rules'' by which individual contractors' performance will be judged.

Response: Reviewers use evaluation protocols developed by CMS business function components. The use of standard protocols by all CPE reviewers helps to add greater overall consistency to the evaluation process. Our general focus, is on reviewing the work performed during the current FY, however, there could be situations where review of work conducted in previous years may be appropriate. The criteria and standards that were in effect at the time the work was performed will be used to evaluate work performed in previous years.

Comment: Commenters stated that contractor workloads, overall funding, and funding for specific activities, as well as CMS priorities and instructions to contractors, all fluctuate from year to year. In addition, in any fiscal year contractors often spend several months operating under restricted continuation budgets that do not reflect the full level of funding for the year that CMS eventually authorizes sometimes too late to be spent efficiently. We were told it is important that reviews of contractor performance take these time-related variances into account.

Response: In conducting CPE reviews we take into consideration budgetary restraints and situations experienced by each contractor. Authorizing the full level of funding to contractors is dependent upon the timing of Congressional appropriations.

Comment: A commenter requested that we provide a description of the types of analysis by intermediaries and carriers that we intend to address under the Claims Processing Criterion.

Response: In the October 31, 2000 **Federal Register** notice of criteria and standards we identified analysis and validation of data as additional functions that may be evaluated under the Claims Processing Criterion. However, rather than being functions we may evaluate, they are methods by which we can evaluate the accuracy of data submitted to CMS by intermediaries and carriers. We erred in listing this as a contractor function that could be reviewed. Thus, there was no analysis in this area that we had planned to evaluate.

Comment: A commenter noted that the FY 2001 Payment Safeguards Criterion specifies identifying fraud cases, investigating allegations of fraud, and putting in place effective fraud detection and deterrence programs. In contrast, the same criterion for carriers specifies identifying fraud and abuse cases, investigating fraud and/or abuse cases, and putting into place effective fraud and abuse detection and deterrence programs. We were asked if the failure to mention ''abuse'' in the criteria and standards for intermediaries meant to imply a distinction between CMS'' evaluations of intermediaries and those of carriers, or was this a drafting oversight?

Response: Failing to mention ''abuse'' under the Payment Safeguards Criterion for intermediaries was indeed a drafting oversight. We have corrected the oversight with this notice.

Comment: We were advised that in section VII, Action Based on Performance Evaluations for the FY 2001 notice, we provided a definition for deficiency and vulnerability but not for ''weakness.'' We have been requested to provide a definition of what constitutes a ''weakness.''

Response: A weakness may be an observed decline in contractor performance or a shortcoming in an operational process.

III. Criteria and Standards—General

Basic principles of the Medicare program are to pay claims promptly and accurately and to foster good beneficiary and provider relations. Contractors must administer the Medicare program efficiently and economically. The goal of performance evaluation is to ensure that contractors meet their contractual obligations. We measure contractor performance to ensure that contractors do what is required of them by law, regulation, contract, and our directives. We have developed a contractor oversight program for FY 2002 that outlines expectations of the contractor; measures the performance of the contractor; evaluates the performance against the expectations; and, takes appropriate contract action based upon the evaluation of the contractor's performance. We will work to develop and refine measurable performance standards in key areas in order to better evaluate contractor performance. In addition to evaluating performance based upon expectations for FY 2002, we may conduct follow-up evaluations of areas in which contractor performance was out of compliance with laws, regulations, and our performance expectations during FY 2001, thus having required the contractor to submit a Performance Improvement Plan (PIP).

In FY 2001, CMS introduced the Contractor Rebuttal Process as a commitment to continual improvement of CPE. This mechanism provides an opportunity for contractors to submit a written rebuttal of CPE findings of fact. Contractors have 7 calendar days from the CPE exit conference to submit a written rebuttal. The contents of the rebuttal will be considered by the review team prior to the issuance of the final CPE report to the contractor. We will assess the implementation and effectiveness of this new process during the FY 2001 CPE review cycle and, in consultation with the Medicare contractors, will determine if the rebuttal process adequately meets our respective needs.

Throughout this notice, we frequently refer to mandated standards. Mandated standards are those required by law, regulation, or judicial decision. We have reviewed the language of the laws, regulations, and court decisions in which the mandates were presented comparing them to those standards we identified as mandated in the more recent notices that have been published. In so doing, we determined that in some cases we had included requirements that in fact were not mandated, for example, accuracy of review decisions. In this FY 2002 notice of criteria and standards we have corrected those erroneously indicated performance mandates. Those requirements were standards in the Claims Processing Criterion and Customer Service Criterion.

The FY 2002 Contractor Performance Evaluation for intermediaries and carriers is structured into five criteria designed to meet the stated objectives. The first criterion is ''Claims Processing,'' which measures contractual performance against claims processing accuracy and timeliness requirements, as well as activities in handling appeals. Within the Claims Processing Criterion, we have identified those performance standards that are mandated by legislation, regulation, or judicial decision. These standards include claims processing timeliness, the accuracy of Explanations of Medicare Benefits (EMOBs) and Medicare Summary Notices (MSNs), the appropriateness of determinations reversed by Administrative Law Judges (ALJs), the timeliness of intermediary reconsideration cases, the timeliness of carrier reviews and hearings, and the readability of carrier reviews. Further evaluation in the Claims Processing Criterion may include, but is not limited to, the accuracy of claims processing, the percent of claims paid with interest, and the accuracy of reconsiderations, reviews, and hearings.

The second criterion is ''Customer Service'' which assesses the adequacy of the service provided to customers by the contractor in its administration of the Medicare program. The mandated standards in the Customer Service Criterion include achieving and maintaining the monthly All Trunks Busy rate for beneficiary telephone inquiries; responding timely to beneficiary telephone inquiries; and providing beneficiaries with written replies that are responsive, written with appropriate customer-friendly tone and clarity, and are at the appropriate reading level. Further evaluation of services under this criterion may include, but is not limited to, the timeliness and accuracy of all correspondence both to beneficiaries and providers; monitoring of the quality of responses provided by the contractor's customer service representatives (quality call

monitoring); beneficiary and provider education and outreach; and service by contractor's customer service representatives to beneficiaries who come to the contractor's facility (walk-in inquiry service).

The third criterion is ''Payment Safeguards,'' which evaluates whether the Medicare Trust Fund is safeguarded against inappropriate program expenditures. Intermediary and carrier performance may be evaluated in the areas of Benefit Integrity (BI) (referred to in prior **Federal Register** notices as Fraud and Abuse), Medical Review (MR), Medicare Secondary Payer (MSP), Overpayments (OP), and Provider Enrollment (PE). In addition, intermediary performance may be evaluated in the area of Audit and Reimbursement (A&R). Mandated performance standards for intermediaries in the Payment Safeguards criterion are the accuracy of decisions on Skilled Nursing Facility (SNF) demand bills, and the timeliness of processing Tax Equity and Fiscal Responsibility Act (TEFRA) target rate adjustments, exceptions, and exemptions. There are no mandated performance standards for carriers in the Payment Safeguards criterion. Intermediaries and carriers may also be evaluated on any Medicare Integrity Program (MIP) activities if performed under their agreement or contract.

The fourth criterion is ''Fiscal Responsibility,'' which evaluates the contractor's efforts to protect the Medicare program and the public interest. Contractors must effectively manage Federal funds for both the payment of benefits and costs of administration under the Medicare program. Proper financial and budgetary controls, including internal controls, must be in place to ensure contractor compliance with its agreement with HHS and CMS. Additional functions reviewed under this criterion may include, but are not limited to, adherence to approved budget, compliance with the Budget and Performance Requirements (BPRs), and compliance with financial reporting requirements.

The fifth and final criterion is ''Administrative Activities,'' which measures a contractor's administrative management of the Medicare program. A contractor must efficiently and effectively manage its operations. Proper systems security (general and application controls), Automated Data Processing (ADP) maintenance, and disaster recovery plans must be in place. A contractor's evaluation under the Administrative Activities criterion may include, but is not limited to, establishment, application, documentation, and effectiveness of internal controls, which are essential in all aspects of a contractor's operation and the degree to which the contractor cooperates with us in complying with the Federal Managers' Financial Integrity Act of 1982 (FMFIA). Administrative Activities evaluations may also include reviews related to implementation of general CMS instructions and data and reporting requirements.

We have also developed separate measures for evaluating unique activities of Regional Home Health Intermediaries (RHHIs). Section 1816(e)(4) of the Act requires us to designate regional agencies or organizations, which are already Medicare intermediaries under section 1816, to perform claim processing functions with respect to freestanding Home Health Agency (HHA) claims. The law requires that we limit the number of these regional intermediaries (RHHIs) to not more than 10; see 42 CFR 421.117 and the final rule published in the **Federal Register** on May 19, 1988 at 53 FR 17936 for more details about the RHHIs.

We have developed separate measures for RHHIs in order to evaluate the distinct RHHI functions. These functions include the processing of claims from freestanding HHAs, hospital affiliated HHAs, and hospices. Through an evaluation using these criteria and standards, we may determine whether the RHHI functions should be moved from one intermediary to another in order to ensure effective and efficient administration of the program benefit.

Below, we list the criteria and standards to be used for evaluating the performance of intermediaries, RHHIs, carriers, and DMEPOS regional carriers. In several instances, we identify a Medicare manual as a source of more detailed requirements. Medicare fee-for-service contractors have copies of the various Medicare manuals referenced in this notice. Members of the public also have access to our manualized instructions. Medicare manuals are available for review at local Federal Depository Libraries (FDLs). Under the FDL Program, government publications are sent to approximately 1,400 designated public libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as a FDL. To locate the nearest FDL, individuals should contact any public library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Information may also be obtained from the following web site: *www.cms.hhs.gov/pubforms/program.htm.* Some manuals may be obtained from the following web site: *www.cms.gov/pubforms/p2192toc.htm.*

Finally, all of our Regional Offices (RO) maintain all Medicare manuals for public inspection. To find the location of the nearest available CMS RO, you may call the individual listed at the beginning of this notice. That individual can also provide information about purchasing or subscribing to the various Medicare manuals.

IV. Criteria and Standards for Intermediaries

A. Claims Processing Criterion

The Claims Processing criterion contains 4 mandated standards.

Standard 1. 95.0 percent of clean electronically submitted non-Periodic Interim Payment claims paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean, non-Periodic Interim Payment electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper non-Periodic Interim Payment claims paid within specified time frames. Specifically, clean, non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 5.0 percent reversal rate by ALJs is acceptable. We have defined an acceptable reversal rate by ALJs as one that is at or below 5.0 percent.

Standard 4. 75.0 percent of reconsiderations are processed within 60 days and 90.0 percent are processed

within 90 days. CMS' expectation is that contractors will meet this percentage on a monthly basis.

Additional functions may be evaluated under this criterion. These functions include, but are not limited to, the following:

- Claims processing accuracy.
- Establishment and maintenance of relationship with Common Working File (CWF) Host.
- Accuracy of processing reconsideration cases with determination letters that are clear and have appropriate customer-friendly tone.

B. Customer Service Criterion

There are no mandated standards for this criterion for intermediaries.

Functions that may be evaluated under this criterion include, but are not limited to the following:

- Ensuring that the monthly All Trunks Busy rate for beneficiary and provider inquiries is achieved and maintained.
- Responding timely and accurately to beneficiary and provider telephone inquiries.
- Quality Call Monitoring.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Providing timely and accurate responses to beneficiaries and providers that are responsive and written with appropriate customer-friendly tone and clarity and those written to beneficiaries are at the appropriate reading level.
- Conducting beneficiary and provider education and outreach.
- Walk-in inquiry service.

C. Payment Safeguards Criterion

The Payment Safeguard criterion contains two mandated standards.

Standard 1. Decisions on SNF demand bills are accurate.

Standard 2. TEFRA target rate adjustments, exceptions, and exemptions are processed within mandated time frames. Specifically, applications must be processed to completion within 75 days after receipt by the contractor or returned to the hospitals as incomplete within 60 days of receipt.

Intermediaries may also be evaluated on any MIP activities if performed under their agreement or contract. These functions and activities include, but are not limited to the following:

Audit and Reimbursement

- Performing the activities specified in our general instructions for conducting audit and settlement of Medicare cost reports.
- Establishing accurate interim payments.

Benefit Integrity

- Identifying potential fraud cases that exist within the intermediary's service area and taking appropriate actions to resolve these cases.
- Investigating allegations of potential fraud that are made by beneficiaries, providers, CMS, Office of Inspector General (OIG), and other sources.
- Putting in place effective detection and deterrence programs for potential fraud.

Medical Review

- Applying analytical skills and focusing resources on particular providers or claim types that represent unnecessary or inappropriate care.
- Making accurate and defensible decisions on medical reviews.
- Developing means of addressing any aberrance identified during the analysis of all local and national data.
- Effectively educating and communicating with the provider community.

Medicare Secondary Payer

- Identifying, recovering, and referring mistaken Medicare payments in accordance with appropriate Medicare Intermediary Manual instructions and other pertinent CMS general instructions.
- Accurately reporting savings and following claim development procedures.
- Prioritizing and processing recoveries in compliance with instructions.
- Financial reporting activities.

Overpayments

- Collecting and referring Medicare debts timely.
- Accurately reporting overpayments to CMS.
- Adhering to our instructions for management of Medicare Trust Fund debts.

Provider Enrollment

- Complying with assignment of staff to the provider enrollment function and training the staff in procedures and verification techniques.
- Complying with the operational standards relevant to the process for enrolling providers.

D. Fiscal Responsibility Criterion

While there are no mandated standards in this criterion, we may review the intermediary's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with us.

Additional matters that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

While there are no mandated standards in this criterion, we may measure an intermediary's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives. We may measure an intermediary's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. An intermediary must also test system changes to ensure the accurate implementation of our instructions.

Our evaluation of an intermediary under the Administrative Activities criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, security, etc).
- Disaster recovery plan.
- Implementation of general CMS instructions.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

V. Criteria and Standards for Regional Home Health Intermediaries (RHHIs)

The following standards are mandated for the RHHI criterion:

Standard 1. 95.0 percent of clean electronically submitted non-Periodic Interim Payment HHA/hospice claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean, non-Periodic Interim Payment electronic claims can be paid

as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper non-Periodic Interim Payment HHA/hospice claims are paid within specified time frames. Specifically, clean, non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 75.0 percent of HHA/hospice reconsiderations are processed within 60 days and 90.0 percent are processed within 90 days. CMS' expectation is that contractors will meet this percentage on a monthly basis.

We may use this criterion to review a RHHI's performance with respect to handling the HHA/hospice workload. This includes processing HHA/hospice claims timely and accurately; properly paying and settling HHA cost reports; and timely and accurately processing reconsiderations from beneficiaries, HHAs, and hospices, interim rate setting, and accuracy of MR coverage decisions.

VI. Criteria and Standards for Carriers

A. Claims Processing Criterion

The Claims Processing criterion contains six mandated standards.

Standard 1. 95.0 percent of clean electronically submitted claims processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper claims processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 98.0 percent of EOMBs and MSNs are properly generated.

Standard 4. 95.0 percent of review determinations are completed within 45 days. CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of carrier hearing decisions are completed within 120 days. CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. Responses to beneficiary reviews are written at an appropriate reading level.

Additional functions may be evaluated under this criterion. These functions include, but are not limited to, the following:

- Claims Processing accuracy.
- Establishment and maintenance of relationship with the CWF Host.
- Accuracy of processing review cases.
- Accuracy of processing hearing cases with determination letters that are clear and have appropriate customer-friendly tone.

B. Customer Service Criterion

The Customer Service criterion contains three mandated standards.

CMS' obligation to evaluate performance of these activities was mandated by the court decisions of *Gray Panther* v. *Heckler*, 1985 WL 81770 (D.D.C.) for Standards 1 and 2 and in *David* v. *Heckler*, 591, F. Supp. 1033, (U.S. Dist. Ct. 1984) for Standard 3. Contractors are expected to comply with performance expectations set forth in the court renderings, unless expectations established by CMS are more stringent. In these instances, contractors must meet CMS' performance expectations.

Standard 1. Achieve and maintain the monthly All Trunks Busy rate for beneficiary telephone inquiries.

Standard 2. Respond timely to beneficiary telephone inquiries.

Standard 3. Responses to beneficiary correspondence are responsive, written with appropriate customer-friendly tone and clarity, and are at the appropriate reading level.

Additional functions which may be evaluated under this criterion include, but are not limited to the following:

- Ensuring that the monthly All Trunks Busy rate for provider inquiries is achieved and maintained.
- Responding timely to provider telephone inquiries.
- Quality Call Monitoring.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Providing timely and accurate responses to beneficiaries and providers that are responsive and written with appropriate customer-friendly tone and clarity.
- Conducting beneficiary and provider education and outreach.
- Walk-in inquiry service.

C. Payment Safeguards Criterion

While there are no mandated standards in this criterion, carriers may be evaluated on any MIP activities if performed under their contracts. In addition, other carrier functions and activities that may be reviewed under this criterion include, but are not limited to the following:

Benefit Integrity

- Identifying potential fraud cases that exist within the carrier's service area and taking appropriate actions to resolve these cases.
- Investigating allegations of potential fraud that are made by beneficiaries, providers, CMS, OIG, and other sources.
- Putting in place effective detection and deterrence programs for potential fraud.

Medical Review

- Applying analytical skills and focusing resources on particular providers or claim types that represent unnecessary or inappropriate care.
- Developing effective means of addressing any aberrance identified through analyzing data to target prepay and post-pay review.
- Making accurate and defensible decisions on medical reviews.
- Effectively educating and communicating with physician and/or supplier communities.

Medicare Secondary Payer

- Identifying, recovering, and referring mistaken Medicare payments in accordance with the appropriate Medicare Carriers Manual instructions, and other pertinent CMS general instructions.
- Accurately reporting savings and following claim development procedures.
- Prioritizing and processing recoveries in compliance with instructions.
- Financial reporting activities.

Overpayments

- Collecting and referring Medicare debts timely.
- Accurately reporting overpayments to CMS.
- Compliance with CMS instructions for management of Medicare Trust Fund debts.

Provider Enrollment

- Complying with assignment of staff to the provider enrollment function and training staff in procedures and verification techniques.

• Complying with the operational standards relevant to the process for enrolling providers.

D. Fiscal Responsibility Criterion

While there are no mandated standards in this criterion, we may review the carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts.

Additional matters that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to the following:

• Adherence to approved program management and MIP budgets.
• Compliance with the BPRs.
• Compliance with financial reporting requirements.
• Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

While there are no mandated standards in this criterion, we may measure a carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure a carrier's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), Automatic Data Processing (ADP) maintenance, and disaster recovery plans must be in place. Also, a carrier must test system changes to ensure accurate implementation of our instructions.

Our evaluation of a carrier under this criterion may include, but is not limited to, reviews of the following:

• Systems security.
• ADP maintenance (configuration management, testing, change management, security, etc.).
• Disaster recovery plan.
• Implementation of general CMS instructions.
• Data and reporting requirements implementation.
• Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

VII. Criteria and Standards for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

The complete list of criteria and standards for evaluating the performance of DMEPOS regional carriers is contained in detail in the DMEPOS' regional carrier statement of work (SOW), which is subject to change due to modifications to the contractor BPRs, as well as legal and administrative changes that have a direct impact on the contractors.

We will use the same six criteria contained in the DMEPOS regional carrier SOW to evaluate the overall performance of DMEPOS regional carriers. They are (1) Quality, (2) Efficiency, (3) Service, (4) Benefit Integrity, (5) National Supplier Clearinghouse, and (6) Statistical Analysis DMEPOS regional carrier.

These six criteria contain a total of nine mandated standards against which all DMEPOS regional carriers must be evaluated as well as examples of other activities for which the DMEPOS regional carriers may also be evaluated. The mandated standards are in the Quality, Efficiency, and Service Criteria.

In addition to being described in these criteria, the mandated standards are also described in Attachment J–37 to the DMEPOS regional carrier SOW.

A. Quality Criterion

The Quality criterion contains one mandated standard.

A DMEPOS regional carrier must pay claims accurately and in accordance with program instructions. The DMEPOS regional carrier is required to:

Standard 1. Properly generate 98.0 percent of MSN's.

The DMEPOS regional carriers must undertake actions to promote effective program administration with respect to DMEPOS regional carrier claims. These activities include, but are not limited to: processing claims accurately, overpayment recovery and offsetting of claims payment; assuring the proper submission of certificates of medical necessity; review of the implementation of fee schedules and reasonable charge updates; medical review activities; implementation of coverage policy; and, analysis of workload to detect patterns of outcomes. We may evaluate the DMEPOS regional carriers in performing these kinds of activities.

B. Efficiency Criterion

The Efficiency criterion contains five mandated standards.

Standard 1. 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare DMEPOS regional carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper claims are processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 95.0 percent of review determinations are completed within 45 days. CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 4. 90.0 percent of DMEPOS regional carrier hearing decisions are completed within 120 days. CMS' expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. Letters prepared to respond to beneficiary requests for reviews are written at an appropriate reading level.

Additional functions which may be evaluated under this criterion include, but are not limited to the following:

• Determinations on review and hearing requests are written accurately and clearly.
• Documentation of telephone reviews is accurate and timely.
• Requests for ALJ hearings are processed timely, to include preparation and forwarding to the ALJ of the case files.
• Completed ALJ decisions are reviewed for accuracy.
• Agency referral and case files are submitted timely to the designated CMS Regional Office.
• ALJ decisions are effectuated correctly and within specified timeframes.
• Documentation of completed ALJ decisions is maintained.
• Requests from the Departmental Appeals Board for ALJ case files are processed.

C. Service Criterion

The Service criterion contains three mandated standards.

CMS' obligation to evaluate performance of these activities was mandated by the court decisions of Gray Panther v. Heckler, 1985 WL 81770 (D.D.C.) for Standards 1 and 2 and in David v. Heckler, 597, F. Supp. 1033, (U.S. Dist. Ct. 1984) for Standard 3. Contractors are expected to comply with performance expectations set forth in the court renderings, unless expectations established by CMS are

more stringent. In such instances, contractors must meet CMS' performance expectations that beneficiaries and suppliers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, the DMEPOS regional carrier statement of work (SOW), and CMS' general instructions.

Standard 1. Achieve and maintain a monthly All Trunks Busy rate for beneficiary telephone inquiries.

Standard 2. Respond timely to beneficiary telephone inquiries.

Standard 3. Responses to beneficiary correspondence are responsive and are written with appropriate customer-friendly tone and clarity, and are at the appropriate reading level. Additional functions which may be evaluated under this criterion include, but are not limited to the following:

- Ensuring that the monthly All Trunks Busy rate for provider inquiries is achieved and maintained.
- Responding timely to provider telephone inquiries.
- Quality Call Monitoring.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.

Providing timely and accurate responses to beneficiaries, providers, and suppliers that are responsive and written with appropriate customer-friendly tone and clarity.

- Conducting beneficiary and provider education and outreach.
- Responding to beneficiary and supplier education and training needs.

D. Benefit Integrity Criterion (referred to in prior ***Federal Register*** *notices as Fraud and Abuse)*

While there are no mandated standards in this criterion, other DMEPOS regional carrier functions and activities that may be reviewed under this criterion include, but are not limited to the following:

- Identifying potential fraud cases that exist within the DMEPOS regional carrier's service area and taking appropriate actions to resolve these cases.
- Investigating allegations of potential fraud made by beneficiaries, providers, CMS, OIG, and other sources.
- Putting in place effective detection and deterrence programs for potential fraud.

E. National Supplier Clearinghouse Criterion

(The National Supplier Clearinghouse (NSC) DMEPOS regional carrier function is assigned to one of the DMEPOS regional carriers. It performs the functions measured under this criterion.)

While there are no mandated standards in this criterion, the NSC DMEPOS regional carrier is required to properly administer the NSC.

We review the NSC activities to ensure the NSC DMEPOS regional carrier meets various requirements, such as—processing new and renewal applications for billing numbers, maintaining supplier files, matching OIG sanctioned suppliers, and enforcing supplier standards.

F. Statistical Analysis DMEPOS Regional Carrier Criterion

(The Statistical Analysis DMEPOS regional carrier function is assigned to one of the DMEPOS regional carriers. It performs the functions measured under this criterion.)

While there are no mandated standards in this criterion, the Statistical Analysis DMEPOS regional carrier is required to properly administer the Statistical Analysis DMEPOS regional carrier program.

We review the activities of the Statistical Analysis DMEPOS regional carrier to ensure it meets various requirements such as: analyzing national reports to identify trends, aberrancies, and utilization patterns; generating reports according to our specifications; serving as the Healthcare Common Procedure Coding System (HCPCS) definition resource center; and developing national parental and enteral nutrition pricing as well as oral anti-cancer drugs pricing.

In addition, we evaluate the Statistical Analysis DMEPOS regional carrier's performance in conducting statistical analysis of data to identify potential areas of over utilization, fraudulent or abusive claims practices, and other areas of concern.

VIII. Action Based on Performance Evaluations

We evaluate a contractor's performance against applicable program requirements for each criterion. Each contractor must certify that all information submitted to us relating to the contract management process, including, without limitation, all files, records, documents and data, whether in written, electronic, or other form, is accurate and complete to the best of the contractor's knowledge and belief. A contractor will also be required to certify that its files, records, documents, and data have not been manipulated or falsified in an effort to receive a more favorable performance evaluation. A contractor must further certify that, to the best of its knowledge and belief, the contractor has submitted, without withholding any relevant information, all information required to be submitted with respect to the contract management process under the authority of applicable law(s), regulation(s), contracts, or CMS' manual provision(s). Any contractor that makes a false, fictitious, or fraudulent certification may be subject to criminal and/or civil prosecution, as well as appropriate administrative action. This administrative action may include debarment or suspension of the contractor, as well as the termination or non-renewal of a contract.

If a contractor meets the level of performance required by operational instructions, it meets the requirements of that criterion. When we determine a contractor is not meeting performance requirements, we will use the terms major nonconformance or minor nonconformance to classify our findings. A major nonconformance is a nonconformance that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose. A minor nonconformance is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services. The contractor will be required to develop and implement a PIP for findings determined to be either a major or minor nonconformance. The contractor will be monitored to ensure effective and efficient compliance with the PIP, and to ensure improved performance when requirements are not met.

The results of performance evaluations and assessments under all criteria applying to intermediaries, carriers, RHHIs and DMEPOS regional carriers will be used for contract management activities and will be published in the contractor's annual Report of Contractor Performance (RCP). We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations when:

- Entering into, renewing, or terminating agreements or contracts with contractors.
- Deciding other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily

on the nature and degree of performance. More specifically, they depend on the following:

- Relative overall performance compared to other contractors.
- Number of criteria in which nonconformance occurs.
- Extent of each major nonconformance.
- Relative significance of the requirement for which major nonconformance occurs within the overall evaluation program.
- Efforts to improve program quality, service, and efficiency.
- Deciding the assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

In addition, if the cost incurred by the intermediary, RHHI, carrier, or DMEPOS regional carrier to meet its contractual requirements exceeds the amount that we find to be reasonable and adequate to meet the cost that must be incurred by an efficiently and economically operated intermediary or carrier, these high costs may also be grounds for adverse action.

IX. Response to Public Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

X. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). Since this notice only describes criteria and standards for evaluating FI's, Carriers and DMEPOS carriers and has no economic or social impact on the program, its beneficiaries or providers or suppliers, this is not a major notice.

The RFA requires agencies to analyze options for regulatory relief of small businesses. This notice does not affect small businesses, individuals and States are not included in the definition of a small business entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This notice does not affect small rural hospitals.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice does not require an impact analysis because it does not have an economic impact on small entities, small rural hospitals, or State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

XI. Federalism

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

XII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 13, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–31720 Filed 12–27–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2135–N]

RIN: 0938–AL34

Medicare Program; Deductible Amount for Medigap High Deductible Options for Calendar Year 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual deductible amount of $1,620 for the Medicare supplemental health insurance (Medigap) high deductible options for 2002. High deductible policy options are those with benefit packages classified as ''F'' or ''J'' that have a high deductible feature. The deductible amount represents the annual out-of-pocket expenses (excluding premiums) that a beneficiary who chooses one of these options must pay before the policy begins paying benefits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Kathryn McCann, (410) 786–7623.

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicare Supplemental Insurance

A Medicare supplemental, or Medigap, policy is the principal type of private health insurance that a beneficiary may purchase to cover certain costs that Medicare does not cover. The beneficiary is responsible for deductibles and coinsurance amounts for both Part A (hospital insurance) and Part B (supplementary medical insurance) of the Medicare program. In addition, Medicare generally does not cover custodial nursing home care, eyeglasses, dental care, and most outpatient prescription drugs. A beneficiary must either pay the full cost of these services, or he or she may purchase additional private health insurance to help pay these costs. Medigap policies offer coverage for some or all of the deductibles and coinsurance amounts required by Medicare. Additionally, Medigap policies may provide coverage for some services that are not covered under the Medicare program.

Section 1882 of the Social Security Act (the Act) establishes, among other things, minimum standards for Medigap policies. No Medigap policy may be issued in a State unless the policy complies with State laws that conform to section 1882(b)(1) of the Act.

The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended the Act by standardizing Medigap benefits and requiring that no more than 10 Medigap benefit packages, Plans ''A'' through ''J,'' be offered nationwide. Three States (Wisconsin, Minnesota, and Massachusetts) experimented with standardizing benefits before the enactment of Federal standards. These States were permitted to keep their alternative forms of Medigap standardization and are referred to as the ''waivered States.''

Plan ''A'' is the basic benefit package. It covers Medicare Part A hospital coinsurance plus coverage for 365 additional days after Medicare benefits end, over the beneficiary's lifetime, Medicare Part B coinsurance (generally 20 percent of the Medicare-approved amount or, in the case of hospital outpatient department services under a prospective payment system, the applicable copayment), and coverage for the first 3 pints of blood per year. Medigap Plans ''B'' through ''J'' contain this basic benefit package, as well as different combinations of additional benefits. Plans ''F'' and ''J'' contain:

- Medicare Part A inpatient hospital deductible.
- Skilled-nursing facility coinsurance.
- Part B deductible.
- Foreign travel health emergencies.
- 100% of Medicare Part B excess charges.

In addition, Plan ''J'' includes:

- At-home recovery.
- Some prescription drug coverage.
- Preventive care.

B. High Deductible Medigap Policies

Section 4032 of the Balanced Budget Act of 1997 (BBA) authorized high deductible versions of Plans ''F'' and ''J'' and their closest counterparts in the waivered States. Unlike the regular versions of Plans ''F'' and ''J,'' the high deductible versions of these policies do not begin paying benefits until the deductible amount is met. Out-of-pocket expenses that can be applied toward this deductible are expenses that would ordinarily be paid by the policy, including Medicare deductibles for Parts A and B, emergency foreign travel expenses in the case of both high deductible policies, and outpatient prescription drug costs in the case of the high deductible version of Plan J. The Plan ''F'' deductible does not include the separate foreign travel emergency deductible of $250. The Plan ''J'' deductible does not include the plan's separate $250 prescription drug deductible or the plan's separate $250 deductible for foreign travel emergencies. Even though foreign travel emergency expenses and prescription drug expenses may be applied toward meeting the plan's overall deductible, these types of expenses can only be paid after the separate $250 deductible for the benefit has been met.

II. Provisions of This Notice

The high deductible amount is determined in accordance with section 1882(p)(11)(C)(i) of the Act. That provision prescribed a deductible of $1500 for 1998 and 1999, and directed that the amount increase each subsequent year by the percent increase in the Consumer Price Index for all urban consumers (CPI–U), all items, U.S. city average. For 2001, the high deductible amount was $1,580. For 2002, the high deductible amount is increased by the percent increase in the CPI–U for the 12-month period ending August 2001. As reported by the Bureau of Labor Statistics, Department of Labor, the CPI–U index was 172.7 in August 2000 and 177.5 in August 2001, resulting in a 2.78 percent increase for the 12-month period ending August 2001. A 2.78 percent increase in $1,580.00 is $1,623.92. Section 1882(p)(11)(C)(ii) of the Act stipulates that this amount be rounded to the nearest multiple of $10. After rounding $1,623.92 to the nearest $10 multiple, the 2002 deductible for the Medigap high deductible options is $1,620.

III. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The aggregate impact of this notice on beneficiaries is negligible, therefore, this is not a major notice.

The RFA requires agencies to analyze options for regulatory relief of small businesses. This notice does not effect small businesses, individuals and States are not included in the definition of a small business entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This notice does not effect small rural hospitals.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice does not require an impact analysis because it does not have an economic impact on small entities, small rural hospitals, or State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Authority: Section 1882 of the Social Security Act. (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 21, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–31721 Filed 12–27–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–HS–02–01B

Discretionary Announcement of the Availability of Funds and Request for Applications for Select Service Areas of Early Head Start; Correction

AGENCY: Administration for Children, Youth and Families, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on September 20, 2001.

On page 48474, Appendix A, Part I, in the State of Washington, in the State

and county column, delete ''King'', in the FY 2002 funding level column delete ''805,124'' and in the Service area column delete ''City of Seattle: Yesler Terrace, Holly Park, High Point and Ranier Vista Public Housing Districts''.

On page 48476, Appendix A, Part II, in the State of Washington, in the State and county Column delete ''None'' and add the county of ''King'', in the FY 2002 funding level column add ''805,124'', and in the Service area column add ''City of Seattle: Yesler Terrace, Holly Park, High Point, and Ranier Vista Public Housing Districts''.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center at 1–800–351–2293 or send an email to *ehs@lcgnet.com.* You can also contact Sherri Ash, Early Head Start, Head Start Bureau at (202) 205–8562.

Dated: December 20, 2001.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 01–31884 Filed 12–27–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 17 and 18, 2002, from 8:30 a.m. to 4:30 p.m.

Location: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact: Jaime Henriquez, Center for Drug Evaluation and Research, (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 17, 2002, the committee will discuss new drug application (NDA) 20–757/S–021, AVAPRO (irbesartan), Sanofi-Synthelabo (c/o Bristol-Myers Squibb), for the treatment of hypertensive patients with type 2 diabetic renal disease. On January 18, 2002, the committee will discuss NDA 21–387, pravastatin/aspirin, Bristol-Myers Squibb, co-package, for long-term management to reduce the risk of death, nonfatal myocardial infarction, myocardial revascularization procedures, and ischemic stroke in patients with clinically evident coronary heart disease.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 7, 2002. Oral presentations from the public will be scheduled each day between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 7, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 14, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–31879 Filed 12–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 17, 2002, from 8 a.m. to 5 p.m., and January 18, 2002, from 8 a.m. to 3 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 17, 2002, the committee will discuss the use of two new drug applications (NDAs): NDA 20–833, Flovent Diskus, and NDA 21–077, Advair Diskus, GlaxoSmithKline, as maintenance therapy in patients with chronic obstructive pulmonary disease (COPD). On January 18, 2002, the meeting will be open to the public from 8 a.m. to 9 a.m., unless public participation does not last that long; from 9 a.m. to 3 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information.

Procedure: On January 17, 2002, from 8 a.m. to 5 p.m. and on January 18, 2002, from 8 a.m. to 9 a.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 11, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on January 17, 2002, and between approximately 8 a.m. and 9 a.m. on January 18, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On January 18, 2002, from 9 a.m. to 3 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 19, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–31878 Filed 12–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Implement performance standards for Special Projects of Regional or National Significance (SPRANS), Community Integrated Service Systems (CISS) projects, and other grant programs administered by MCHB.

The Health Resources and Services Administration (HRSA) proposes to modify reporting requirements for SPRANS projects, CISS projects, and other grant programs administered by the Maternal and Child Health Bureau (MCHB) to include national performance measures being developed in accordance with the requirements of the ''Government Performance and Results Act (GPRA) of 1993'' (Public Law 103–62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance. Performance measures for States have already been established under the block grant provisions of Title V. Performance measures for other MCHB-funded grant programs are currently being finalized, and will be sent to the Office of Management and Budget for approval.

There are approximately 30 proposed new performance measures. However, some measures are specific to certain types of programs, and will not apply to all grantees. Furthermore, the measures are expected to be based primarily on existing data. Thus, response burden associated with this proposed requirement will be minimal. The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Application and Annual Report	750	1	8	6,000

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 20, 2001.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–31898 Filed 12–27–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White CARE Act Dental Reimbursement Program (OMB No. 0915–0151)—Revision

The Dental Reimbursement Program (DRP) under Part F of the Ryan White CARE Act offers grants to accredited dental schools and programs that provide non-reimbursed oral health care to patients with HIV disease. The Ryan White CARE Act Amendments of 2000 expanded eligibility of this program to accredited schools of dental hygiene, in addition to previously funded schools of dentistry and post-doctoral dental education programs.

HRSA requests a revision to the DRP Application that schools and programs use to apply for funding of non-reimbursed costs incurred in providing oral health care to patients with HIV. Awards are authorized under section 776(b) of the Public Health Service Act (42 U.S.C. 294n). The 2001 DRP Application is intended to collect data in three different areas: program information, patient demographics and services, and reimbursement and funding. It also requests applicants to provide narrative descriptions of their services and facilities, as well as their links and collaboration with community-based providers of oral health services.

The primary purpose of collecting this information annually, as part of the DRP Application, is to verify eligibility and determine the reimbursement amount each applicant should receive. This information also allows HRSA to learn about (1) the extent of the involvement of dental schools and programs in treating patients with HIV, (2) the number and characteristics of clients who receive CARE Act-supported oral health services, (3) the types and frequency of the provision of these services, (4) the non-reimbursed costs of oral health care provided to patients with HIV, and (5) how applicants intend to use DRP funds once they are received. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected in the DRP

Application is critical for HRSA, State and local grantees, and individual providers, to help assess the status of existing HIV-related health service delivery systems.

The reporting burden for reviewing the DRP Application Instructions and completing the Application Form is estimated as:

Form	Number of respondents	Hours per application	Total burden hours
Application	125	19	2,375

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 19, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–31880 Filed 12–27–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4652–N–19]

Notice of Proposed Information Collection for Public Comment for Model Form of Agreement Between Owner and Design Professional; Contract Provisions Required by Federal Law or Owner Contract With the Department of Housing and Urban Development

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Model Form of Agreement Between Owner and Design Professional; Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development.

OMB Control Number: 2577–0015.

Description of the need for the information and proposed use: The contractural agreements between a HUD grantee (housing agency (HA), and an architect/engineer (A/E) for design and construction services establish responsibilities of both parties pursuant to the contract. The HA and A/E are not required by the contract to submit any materials to HUD. These contractural agreements are required by Federal Law 85.36. Signing of the contracts is required to obtain or retain benefits.

Agency form number: HUD–51915, HUD–51915–A.

Members of affected public: State, Local Government, Business or other for-profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents; frequency of response, and hours of response: 2,630 projects (respondents), one A/E contract per project, two hours per contract, 5,260 hours includes signing the contracts and preparation of the contracts using the model form of agreement. 657 total annual recordkeeping burden (2,630 projects × .25 hours/contract).

Status of the proposed information collection: Extension.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2001.

Michael Liu,

Assistant Secretary, for Public and Indian Housing.

BILLING CODE 4210–33–C

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0015 (exp.3/31/2002)

Model Form of Agreement Between Owner and Design Professional

Model Form of Agreement Between Owner and Design Professional

U. S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0015
(exp. 3/31/2002)

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 24 CFR 85.36. These contractual agreements are required by Federal law or regulation pursuant to 24 CFR Part 85.36. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

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Introduction to Agreement

Agreement
made as of the _____ day of _____ in the year (yyyy) of _____

Between the **Owner** (Name & Address)

and the **Design Professional** (Name, Address and Discipline)

For the following **Project** (Include detailed description of Project, Location, Address, Scope and Program Designation)

The Owner and Design Professional agree as set forth below.

Article A: Services

A 1.0 Design Professional's Basic Services

A. 1.1 Areas of Professional's Basic Services. Unless revised in a written addendum or amendment to this Agreement, in planning, designing and administering construction or rehabilitation of the Project, the Design Professional shall provide the Owner with professional services in the following areas:

- Architecture
- Site Planning
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Civil Engineering
- Landscape Architecture
- Cost Estimating
- Construction Contract Administration

A 1.2 Phases and Descriptions of Basic Services.

A. 1.2.1 Schematic Design/Preliminary Study Phase. After receipt of a Notice to Proceed from the Owner, the Design Professional shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the building(s), and site design(s), planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. Additionally, the Design Professional shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions. Documents in this phase shall include:

- Site plan(s)
- Schedule of building types, unit distribution and bedroom count
- Scale plan of all buildings, and typical dwelling units
- Wall sections and elevations
- Outline specifications
- Preliminary construction cost estimates
- Project specific analysis of codes, ordinances and regulations
- Three dimensional line drawings

A. 1.2.2 Design Development Phase. After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Professional shall prepare and submit to the Owner Design Development Documents. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:

- Drawings sufficient to fix and illustrate project scope and character in all essential design elements
- Outline specifications
- Cost estimates and analysis
- Recommendations for phasing of construction
- Site plan(s)
- Landscape plan
- Floor plans
- Elevations, building and wall sections
- Updated three dimensional line drawings
- Engineering drawings

A. 1.2.3 Bidding, Construction and Contract Document Phase. After receipt of the Owner's written approval of Design Development Documents, the Design Professional shall prepare Construction Documents. After consultation with the Owner and Owner's attorney, if requested by the owner, the Design Professional shall also prepare and assemble all bidding and contract documents. The Design Professional shall revise these Bidding, Construction and Contract documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. They shall, include in a detailed, manner all work to be performed; all material; workmanship; finishes and equipment required for the architectural, structural, mechanical, electrical, and site work; survey maps furnished by Owner; and direct reproduction of any logs and subsurface soil investigations. These documents shall include:

- Solicitation for Bids
- Form of Contract
- Special Conditions
- General Conditions
- Technical Specifications
- Plans and drawings
- Updated cost estimates

A. 1.2.4 Bidding and Award Phase. After written approval of Bidding, Construction and Contract Documents from the Owner, the Design Professional shall assist in administering the bidding and award of the Construction Contract. This shall include:

- Responding to inquires
- Drafting and issuing addendum approved by Owner
- Attending prebid conference(s)
- Attending public bid openings
- Reviewing and tabulating bids
- Recommending list of eligible bids
- Recommending award
- Altering drawings and specifications as often as required to award within the Estimated Construction Contract Cost

A. 1.2.5 Construction Phase. After execution of the Construction Contract, the Design Professional shall in a prompt and timely manner administer the Construction Contract and all work required by the Bidding, Construction and Contract Documents. The Design Professional shall endeavor to protect the Owner against defects and deficiencies in the execution and performance of the work. The Design Professional shall:

- Administer the Construction Contract.
- Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Owner.
- Review and approve contractor's shop drawings and other submittals for conformance to the requirements of the contract documents.
- At the Owner's written request, and as Additional Service, procure testing from qualified parties.
- Monitor the quality and progress of the work and furnish a written field report ☐ weekly, ☐ semi monthly, ☐ monthly, or ☐ _____. This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to the Design professional's failure to properly perform its duties and responsibilities. The Owner may direct additional monitoring but only as Additional Services.
- Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Design Professional.
- Review, approve and submit to Owner the Contractor Requests for Payment.
- Conduct all job meetings and record action in a set of minutes which are to be provided to the Owner.
- Make modifications to Construction Contract Documents to correct errors, clarify intent or to accommodate change orders.
- Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- Promptly notify Owner in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- Negotiate, prepare cost or price analysis for and countersign change orders.
- Prepare written punch list, certificates of completion and other necessary construction close out documents.
- Prepare a set of reproducible record prints of Drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the contractor to the Design Professional.

A. 1.2.6 Post Completion/Warranty Phase. After execution of the Certificate of Completion by the Owner, the Design Professional shall:

- Consult with and make recommendations to Owner during warranties regarding construction, and equipment warranties.
- Perform an inspection of construction work, material, systems and equipment no earlier than nine months and no later than ten months after completion of the construction contract and make a written report to the Owner. At the Owner's request, and by Amendment to the Additional Services section of this contract, conduct additional warranty inspections as Additional Services.
- Advise and assist Owner in construction matters for a period up to eighteen months after completion of the project, but such assistance is not to exceed forty hours of service and one nonwarranty trip away from the place of business of the Design Professional.

A. 1.3 Time of Performance. The Design Professional's schedule for preparing, delivering and obtaining Owner's approval for Basic Services shall be as follows:

- Schematic Design/Preliminary Study Documents within _____ calendar days for the date of the receipt of a Notice to Proceed.
- Design Development Documents within _____ calendar days from the date of receipt of written approval by the Owner of Schematic Design/Preliminary Study documents.
- Bidding, Construction and Contract Documents within _____ calendar days from the date of receipt of written approval by the Owner of Design Development Documents.

A. 2.0 Design Professional's Additional Services

A. 2.1 Description of Additional Services. Additional Services are all those services provided by the Design Professional on the Project for the Owner that are not defined as Basic Services in Article A, Section 1.2 or otherwise required to be performed by the Design Professional under this Agreement. They include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Professional and not due to any errors, omissions, or failures on the part of the Design Professional to carry out obligations otherwise set out in this Agreement.

A. 2.2 Written Addendum or Contract Amendment. All additional services not already expressly required by this agreement shall be agreed to through either a written addendum or amendment to this Agreement.

Article B: Compensation and Payment

B. 1.0 Basic Services

B. 1.1 Fixed Fee for Basic Services. The Owner will pay the Design Professional for Basic Services performed as defined by A.1.2, a Fixed Fee (stipulated sum) of $ _____ plus Reimbursable Expenses identified in Article B.2.0. Such

payment shall be compensation for all Basic Services required, performed, or accepted under this Contract.

B. 1.2 Payment Schedule. Progress payments for Basic Services for each phase of work shall be made in proportion to services performed as follows:

Phase	Amount
Schematic Design/Preliminary Study Phase	$ _____
Design Development Phase	$ _____
Bidding, Construction & Contract Document Phase	$ _____
Bidding & Award Phase	$ _____
Construction Phase	$ _____
Post Completion/ Warranty Phase	$ _____
Total Basic Services	$ _____

B. 2.0 Reimbursables

B. 2.1 Reimbursable Expenses. The Owner will pay the Design Professional for the Reimbursable Expenses listed below up to a Maximum Amount of $ _____. Reimbursable Expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Design Professional in connection with the Project as enumerated below.

B. 2.1.1 Travel Costs. The reasonable expense of travel costs incurred by the Design Professional when requested by Owner to travel to a location that lies outside of a 45 mile radius of either the Project site, Design Professional's office (s), and Owner's office.

B. 2.1.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telefax costs.

B. 2.1.3 Delivery Costs. Courier services and overnight delivery costs.

B. 2.1.4 Reproduction Costs. Reproduction and postage costs of required drawings, specifications, Bidding and Contract documents, excluding the cost of reproductions for the Design Professional or Subcontractor's own use.

B. 2.1.5 Additional Reimbursables. The Design Professional and Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses. These Reimbursables shall not be limited by the Maximum Amount agreed to above. A separate Maximum Amount for these Reimbursables shall be established.

B .3.0 Additional Services

B. 3.1 Payment for Additional Services. The Owner will pay the Design Professional only for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner and the Design Professional pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

B. 4.0 Invoicing and Payments

B. 4.1 Invoices. All payments shall require a written invoice from the Design Professional. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Agreement, name and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed documentation.

B. 4.2 Time of Payment. Upon the Design Professional's proper submission of invoices for work performed or reimbursable expenses, the Owner shall review and, if the work is in conformance with the terms of the Agreement, make payment within thirty days of the Owner's receipt of the invoice.

Article C: Responsibilities

C. 1.0 Design Professional's Responsibilities

C. 1.1 Basic Services. The Design Professionals shall provide the Basic Service set out in Article A.1.0.

C. 1.2 Additional Services. When required under this Agreement or agreed to as set out in A.2.0, the Design Professional shall provide Additional Services on the Project.

C. 1.3 General Responsibilities. The Design Professional shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Professional under this Agreement. The Owner's review, approval, acceptance of, or payment for Design Professional services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by Design Professional's negligent performance under this Agreement. Furthermore, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Owner or Design Professional by law.

C. 1.4 Designing Within Funding Limitations. The Design Professional shall perform services required under this Contract in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) $ _____ or (2) an amount to be provided by the Owner in writing to the Design Professional prior to the commencement of Design Professional services. This fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Owner has the right to require the Design Profes-

sional to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.

C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations. The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. If the Project is within an Indian reservation, tribal laws, codes and regulations shall be substituted for state and local laws, codes, ordinances and regulations. However, on such a Native American Projects, the Owner may additionally designate that some or all state and local codes shall apply. In some of these circumstances, a model national building code may be selected by the Indian or Native American Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement.

C. 1.6 Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law or when the project is located on an Indian Reservation.

C. 1.7 Attendance at Conferences. The Design Professional or designated representative shall attend project conferences and meetings involving matters related to basic services covered under this contract. Attendance at community wide meetings shall be considered an additional service.

C. 2.0 Owner's Responsibilities

C. 2.1 Information. The Owner shall provide information regarding requirements for the project, including a program that shall set forth the Owner's objectives and schedule. The Owner shall also establish and update the Maximum Construction Cost. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The Design Professional, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.

C. 2.2 Notice of Defects. If the Owner observes or otherwise becomes aware of any fault or defect in the construction of the project or nonconformance with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or nonconformance to the Design Professional.

C.2.3 Contract Officer. The Owner shall designate a Contract Officer authorized to act on its behalf with respect to the design and construction of the Project. The Contract Officer shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Design Professional's work.

C. 2.4 Duties to Furnish. The Owner shall provide the Design Professional the items listed below.

C. 2.4.1 Survey and Property Restrictions. The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Professional to furnish any of these items as an Additional Service.

C. 2.4.2 Existing Conditions. The Owner shall provide the Design Professional any available "as built" drawings of buildings or properties, architect surveys, test reports, and any other written information that it may have in its possession and that it might reasonably assume affects the work.

C. 2.4.3 Waivers. The Owner shall provide the Design Professional information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.

C. 2.4.4 Minimum Wage Rates. The Owner shall furnish the Design Professional the schedule of minimum wage rates approved by the U.S. Secretary of Labor for inclusion in the solicitation and Contract Documents.

C. 2.4.5 Tests. When expressly agreed to in writing by both the Owner and the Design Professional, the Owner shall furnish the Design Professional all necessary structural, mechanical, chemical or other laboratory tests, inspections and reports required for the Project.

C. 2.4.6 Contract Terms. The Owner or its legal counsel may provide the Design Professional text to be incorporated into Bidding and Construction Contract Documents.

Article D: Contract Administration

D. 1.0 Prohibition of Assignment. The Design Professional shall not assign, subcontract, or transfer any services, obligations, or interest in this Agreement without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for financing the Design Professional's performance.

D. 1.1 Ownership of Documents. All drawings, specifications, studies and other materials prepared under this contract shall be the property of the Owner and at the termination or completion of the Design Professional's services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the subject data without the Design Professional's written verification, such re-use will be at the sole risk of the Owner without liability to the Design Professional.

D. 1.2 Substitutions.

A. The Design Professional shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Owner which shall not unreasonably be withheld.

B. The Design Professional's personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the contract. No diversion or substitution of such key personnel shall be made by the Design professional without the prior written consent of the Owner.

_____

_____

_____

_____

_____

D. 1.3 Suspension. The Owner may give written notice to the Design Professional to suspend work on the project or any part thereof. The Owner shall not be obligated to consider a claim for additional compensation if the Design Professional is given written notice to resume work within 120 calendar days. If notice to resume work is not given within 120 calendar days, the Design Professional shall be entitled to an equitable adjustment in compensation.

D. 1.4 Subcontracts. The Design Professional will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

D. 1.5 Disputes. In the event of a dispute arising under this Agreement, the Design Professional shall notify the Owner promptly in writing and submit its claim in a timely manner. The Owner shall respond to the claim in writing in a timely manner. The Design Professional shall proceed with its work hereunder in compliance with the instructions of the Owner, but such compliance shall not be a waiver of the Design Professional's rights to make such a claim. Any dispute not resolved by this procedure may be determined by a court of competent jurisdiction or by consent of the Owner and Design Professional by other dispute resolution methods.

D. 1.6 Termination. The Owner may terminate this Agreement for the Owner's convenience or for failure of the Design Professional to fulfill contract obligations. The Owner shall terminate by delivering to the Design Professional a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Professional shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this contract whether completed or in process. If the termination is for convenience of the Owner, the Owner shall be liable only for payment for accepted services rendered before the effective date of termination.

D. 1.7 Insurance. The Design professional shall carry Commercial or Comprehensive General Liability Insurance, Professional Liability Insurance (for a period extending two years past the date of completion of construction), and other insurance as are required by law, all in minimum amounts as set forth below. The Design Professional shall furnish the Owner certificates of insurance and they shall state that a thirty day notice of prior cancellation or change will be provided to the Owner. Additionally, the Owner shall be an additional insured on all Commercial or Comprehensive General liability policies.

Insurance	Limits or Amount

D. 1.8 Retention of Rights. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Design Professional shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner caused by the Design professional 's negligent performance of any of the services furnished under this contract.

Article E: Additional Requirements

E. 1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

E. 1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 24 CFR 85.36 (f) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

E. 1.3 Restrictive Drawings and Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

E. 1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

E. 1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

E. 1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his or her immediate family,

(iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

No member, officer, or employee of the Owner, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

E. 1.8 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

E. 1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of $10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

E. 1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

E. 1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

E. 1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. Reserved.

H. Reserved.

E. 1.13 Reserved.

E. 1.14 Clean Air and Water. (Applicable to contracts in excess of $100,000). Because of 24 CFR 85.36(i)(12) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of $100,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

E. 1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

E. 1.18Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

Article F: Other Owner Requirements (if any)

(Continue on additional pages as necessary)

This Agreement is entered into as of the day and year first written above.

Owner	Design Professional
(Housing Authority)	(Firm)
(Signature)	(Signature)
(Print Name)	(Print Name)
(Print Title)	(Print Title)

Addendum (If any)
(Additional Services and other modifications)

This is an Addendum to a Standard Form of Agreement between Owner and Design Professional signed and dated the _____ day of _____ in the year (yyyy) of _____ between the Owner _____ and Design Professional _____ on Project _____. The parties to that Agreement agree to modify the Agreement by the above delineated Additional Services and modifications.

This Addendum is dated this _____ day of _____ in the year (yyyy) of _____.

Owner	Design Professional
_____	_____
(Housing Authority)	(Firm)
_____	_____
(Signature)	(Signature)
_____	_____
(Print Name)	(Print Name)
_____	_____
(Print Title)	(Print Title)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0015 (exp.7/31/98)

Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development

Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development

U. S. Department of Housing and Urban Development
Office of Public and Indian Housing

1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 24 CFR 85.36 (F) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

1.3 Restrictive Drawings and Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235, 905.260 and 905.639), the Design Professional shall provide such a certification to the Owner.

1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his or her immediate family,

(iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present

member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

No member, officer, or employee of the Owner, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

1.8 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of $10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. Pursuant to 24 CFR 905.170(b), compliance with Section 3 requirements shall be to the maximum extent consistent with, but not in derogation of compliance with section 7(b) of the Indian Self-Determination and Education Assistance, 25 U.S.C. section 450e(b) when this law is applicable.

1.13 Indian Preference in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.165 and Federal law, the Design Professional shall provide Indian Preference in its contracting, training, and employment practices when this contract is with an Indian Housing Authority and shall incorporate the following language into all of its subcontracts:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(ii) The parties to this contract shall comply with the provisions of said section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)) and all HUD requirements adopted pursuant to section 7(b).

(iii) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(iv) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(v) Upon a finding by the IHA or HUD that any party to the contract is in violation of the section 7(b) clause, said party shall at the direction of the IHA, take appropriate remedial action pursuant to the contract.

1.14 Clean Air and Water. (Applicable to contracts in excess of $100,000). Because of 24 CFR 85.36(i)(12) and federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of $100,000.

1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex , national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

[FR Doc. 01–31853 Filed 12–27–01; 8:45 am]
BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4655–N–25]

Notice of Proposed Information Collection: Comment Request; Application and Re-certification Procedures for FHA Inspectors

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 26, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451—7th Street SW, Washington, DC 20410, telephone (202) 708–5221, (this is not a toll-free number), for copies of the proposed forms and other information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application and Re-certification Procedures for FHA Inspectors.

OMB Control Number, if applicable: None.

Description of the need for the information and proposed use: This is a new information collection, which includes the use of a previously approved form, Form HUD–92563. The information collection is essential to the Department's efforts to ensure that compliance inspectors who determine if the quality of construction of property accepted as security for FHA insured loans possess the prerequisite knowledge and skills to make these determinations. The Department also wishes to standardize this procedure throughout the country. Inspectors seeking to be placed on FHA's Inspection roster must submit an application to be considered acceptable as an inspector in HUD's single family housing programs. The uses of qualified compliance inspectors are viewed as critical to minimizing the placement of FHA mortgage insurance on poorly constructed dwellings.

Agency form numbers, if applicable: Form HUD–92563.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are estimated to be 3,000, an average of 5,250 annual burden hours are estimated, and the frequency of responses is estimated to be once.

Status of the proposed information collection: This is a new information collection for which OMB approval is requested.

Authority: The Paperwork Reduction act of 1995, 44 U.S.C. 35, as amended.

Dated: December 12, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–31881 Filed 12–27–01; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4652–N–18]

Announcement of OMB Approval Number for the Procedure for Obtaining Certificates of Insurance for Capital Program Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB approval number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the requirement for the consolidated public housing certificate of completion.

FOR FURTHER INFORMATION CONTACT: Arthur Methvin, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0614, extension 4037. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the requirement for the consolidated public housing certificate of completion. The approval number for this information collection is 2577–0046, which expires 10/31/2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: December 18, 2001.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 01–31882 Filed 12–27–01; 8:45 am]
BILLING CODE 4310–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–52]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 20, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 01–31854 Filed 12–27–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Status of the Rio Grande Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to initiate a status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce our intent to initiate a candidate status review for the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) to determine if candidate status is warranted. The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. Through the Federal rulemaking process, we add these species to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered or Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened but for which preparation and publication of a proposal is precluded by higher-priority listing actions. On or before June 4, 2002, we will make a determination concerning the results of this review for the Rio Grande cutthroat trout and, shortly thereafter, we will publish this determination in the **Federal Register**.

DATES: Comments and information from all interested parties for our use in the status review and preparing a revised finding will be accepted until February 26, 2002.

ADDRESSES: Questions and comments concerning this status review should be sent to Joy Nicholopoulos, Field Supervisor, U.S. Fish and Wildlife Service, 2105 Osuna Rd. NE, Albuquerque, NM 87113. Comments can be provided via e-mail to R2FWE_AL@fws.gov. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anna Maria Muñoz, Fish and Wildlife Biologist (see **ADDRESSES** section), telephone (505) 346–2525.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1998, we received a petition from Kieran Suckling, of the Southwest Center for Biological Diversity requesting that the Service add the Rio Grande cutthroat trout (*Onchorynchus clarki virginalis*) to the list of threatened and endangered species. The petition addressed the range-wide distribution of the Rio Grande cutthroat trout that included populations in Colorado and New Mexico.

The Rio Grande cutthroat trout is the southernmost of 14 subspecies of cutthroat trout (Behnke 1967, 1972, 1992; Sublette et al. 1990). There are two phenotypic forms of the subspecies, one in the Rio Grande and one in the Pecos River (Behnke 1992). The species derives its name from the distinctive red or orange slashes beneath the lower jaw. The general body coloration is yellowish green to grayish brown; the abdomen is creamy white. Variably-sized black spots cover the upper body and are more numerous posteriorly; dorsal, adipose, and caudal fins carry black spots (Koster 1957, Behnke 1992, Sublette et al. 1990). Although the historical distribution of the Rio Grande cutthroat trout is not known with certainty, it is likely that the subspecies occurred not only in all waters in the upper Rio Grande, Pecos, and Canadian River Basins that are currently capable of supporting trout, but also in other stream reaches within these watersheds that formerly provided the habitat requisites of coldwater species.

Section 4(b)(3)(B) of the Act requires that we make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action is—(a) not warranted; (b) warranted; or (c) warranted but precluded from immediate proposal by other pending listing proposals of higher priority. We subsequently published a notice of a 90-day finding in the **Federal Register** (63 FR 49062) on September 14, 1998. In the 90-day finding we concluded that the petition did not present substantial information indicating that listing of the Rio Grande cutthroat trout may be warranted.

Our finding recognized that livestock grazing, road construction, and logging were primary factors in the constriction of the Rio Grande cutthroat trout's historical range, and continue to impact streams and riparian habitats where measures to limit those impacts are lacking. The Service concluded that the management objectives of both States, set forth in respective management plans formulated for the Rio Grande cutthroat, would provide for the continued management, conservation, and stability of this subspecies and its habitats.

On June 9, 1999, a complaint was filed by the Southwest Center for Biological Diversity challenging the September 14, 1998, 90-day petition finding as violating the Act and the Administrative Procedures Act. Recently, while the litigation was pending, we received some information (particularly related to the presence of whirling disease in hatchery fish in the wild) that led us to believe that further review of the status of the species was warranted.

On November 8, 2001, a settlement agreement executed by both parties (the Service and the Center for Biological Diversity) was filed with the court. The settlement stipulates that we will initiate a candidate status review for the Rio Grande cutthroat trout. The settlement also stipulates that on or before June 4, 2002, we will make a determination concerning the results of this review and, shortly thereafter, we will publish our determination in the **Federal Register**. The agreement also states that we will not vacate our previous determination in the interim.

Request for Information

Our determination of candidate status for the Rio Grande cutthroat trout shall be based upon the best available scientific and commercial data, as required under section 4(b)(1)(A) of the Act. We request you submit any further information on the Rio Grande cutthroat trout. We are particularly interested in any information concerning the following:

(1) Current population numbers and trends for each of the populations of the Rio Grande cutthroat trout;

(2) Whether there are documented increases in those populations or their habitat;

(3) The status of remaining habitat areas;

(4) The current threats and future threats to those populations and remaining habitat areas; and

(5) Other regulatory mechanisms that address those threats; and the success of those mechanisms to date.

References Cited

A complete list of all references cited is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this document is New Mexico Ecological Services Field Office staff (see **ADDRESSES** section).

Authority: The authority for this action is section 4(b)(1)(A) of the Endangered Species Act, 16 U.S.C. 1533.

Dated: November 23, 2001.

Nancy Kaufman,

Regional Director.

[FR Doc. 01–31911 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Industrial Gas Pipeline Right-of-Way Permit Application Crossing Fish and Wildlife Service National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) advises the public that Air Products, L.P., of Houston, Texas, has submitted an application to install a 10-inch nominal pipeline for transportation of industrial gas from Bayport, Texas, to Freeport, Texas, containing approximately 52.7 miles in length and crossing portions of Harris, Galveston, and Brazoria Counties, Texas. The pipeline will be within an existing 300-foot wide pipeline right-of-way corridor that crosses the Brazoria National Wildlife Refuge, in Brazoria County, Texas. The portion that will cross the Service land is approximately 165.11 rods and will utilize a 12-foot by 55-foot surface site, in Brazoria County, Texas. The pipeline will consist of 10¾ inches O.D. steel line pipe, 0.365-inch wall thickness, API specification 5L Grade X–42, coated with fusion bonded epoxy, and cathodically protected, and will be buried at a minimum of 5 feet. An Environmental Analysis and Cultural Resources Review has been prepared and is on file.

This notice informs the public that the Service will be proceeding with the processing of the application, the compatibility determination and the approval processing which includes the preparation of the terms and conditions of the permit.

DATES: Written comments should be received on or before January 28, 2002 to receive consideration by the Service.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, Division of Realty, Attention: Lena V. Marie, Realty Specialist, P.O. Box 1306, Albuquerque, New Mexico 87103–1306, telephone number 505–248–7411 or fax number 505–248–6803.

SUPPLEMENTARY INFORMATION: The Refuge Manager for the Brazoria National Wildlife Refuge has approved the route of the pipeline that lies within an existing 300-foot wide right-of-way corridor.

Right-of-Way applications for pipelines are to be filed in accordance with Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C.), as amended by the Act of November 16, 1973, (37 Stat. 576, Public Law 93–153).

Dated: November 26, 2001.

Esther M. Pringle,

Acting Regional Director.

[FR Doc. 01–31858 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Applications for Incidental Take Permits by Gulf Highlands LLC and Fort Morgan Paradise Joint Venture in Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; Reopening of public comment period.

We, the U.S. Fish and Wildlife Service (Service), announce the availability of an Environmental Assessment and receipt of applications for incidental take permits for residential development in Alabama. We also provide notice that the public comment period for the proposal is reopened to allow all interested parties to submit written comments on the proposed incidental take permits. Comments previously submitted need not be resubmitted. The original public notice, 66 FR 54020–54022, opened the comment period from October 25 through December 10, 2001.

Gulf Highlands LLC and Fort Morgan Paradise Joint Venture (Applicants) seek incidental take permits (ITP) from the Fish and Wildlife Service (Service) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed take would be incidental to otherwise lawful activities, including construction of residential condominiums, commercial facilities, and recreational amenities on adjoining tracts of land owned by the Applicants. The proposed action would involve approval of the Habitat Conservation Plan (HCP) jointly developed by the Applicants, as required by section 10(a)(2)(B) of the Act, to minimize and mitigate for incidental take of the Federally-listed, endangered Alabama beach mouse (*Peromyscus polionotus ammobates*)(ABM), the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), the threatened green sea turtle (*Chelonia mydas*), and the threatened loggerhead sea turtle (*Caretta caretta*). The subject permits would authorize take of ABM and the three sea turtles along 2,844 linear feet of coastal dune habitat fronting the Gulf of Mexico in Baldwin County, Alabama. The Applicants' properties total 180.5 acres, but only 62 acres would be developed. Additionally, about 16 acres of platted road rights-of-way are encompassed by the project and bring the total area to 196.4 acres. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the ABM and sea turtles is provided in the Applicants' HCP, the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan/Applications for Incidental Take. The permit applications incorporate the Applicants' HCP as the proposed action for evaluation in the Service's EA. Copies of the EA on compact disk and the HCP

may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has not made a preliminary determination of whether issuance of the ITPs would be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Service must decide whether issuance of the proposed ITPs constitutes a major Federal action and whether to prepare a Finding of No Significant Impact based on the EA and public comment, or if preparation of an Environmental Impact Statement (EIS) is appropriate. The final determination will be made no sooner than the close of the comment period. This notice is provided pursuant to section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit numbers TE007985–0 and TE031307–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to *''david_dell@fws.gov''*. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message.

Due to Court order, the Department of Interior has temporarily lost use of our internet capability, and likely will not regain it by the time this notice is published. We encourage the public to submit comments by mail or express courier, or to call (see **FURTHER INFORMATION**) to confirm whether our internet capability has been restored.

If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: The original comment period closed December 10, 2001. The comment period is hereby reopened through January 4, 2002. Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**).

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain an electronic copy on compact disk by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), Ecological Services Field Office, 1208–B Main Street, Daphne, Alabama 36526, or Bon Secour National Wildlife Refuge, 12295 State Highway 180, Gulf Shores, Alabama 35603. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Please reference permit numbers TE007985–0 and TE031307–0 in requests for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Celeste South, Fish and Wildlife Biologist, Daphne Field Office, Alabama (see **ADDRESSES** above), telephone: 251/441–5181.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles).

ABM habitat on the Applicants' properties consists of approximately 38 acres of primary/secondary dunes, 21.7 acres of escarpment, 21.8 acres of adjacent scrub and 90 acres of interior scrub. The total area of designated critical habitat among these habitats is 32.4 acres, consisting of open beach dunes and swales within the southern portions of the properties, extending from the mean high water line of the Gulf of Mexico northward for 500 feet.

The green turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests, four of which were found on shoreline beaches along the Applicants' properties.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs

primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the period 1994–2001 report no nests of the Kemp's ridley sea turtle on beaches along the Applicants' properties. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The two projects, Gulf Highlands Condominiums (GHC) and Beach Club West (BCW), are separate developments but are being considered together at the request of Gulf Highlands LLC and Fort Morgan Paradise Joint Venture, the respective Applicants. The two Applicants have joined together to produce a single Habitat Conservation Plan (HCP), as required by the Endangered Species Act, for their projects. The Applicants hope to obtain their permits and jointly implement the provisions of the HCP.

The EA considers the effects of six project alternatives, including a no-action alternative that would result in no new construction on the Project site, and a single family home alternative that would result in build out of the properties as originally platted. Neither of these alternatives would be economically feasible for the applicants. The remaining four alternatives involve various arrangements of high-rise condominiums. The important differences among these four alternatives relate to the amount of beach front developed, the width and placement of an undeveloped ABM ''corridor'' to allow ABM movements to and from the dune and escarpment habitats, and the placement of the condominium towers. One of these alternatives was suggested by the Service as a ''less-take'' alternative and would move the development approximately 300 feet north of the escarpment. The applicants have cited legal and economical reasons for why the less-take alternative could not be implemented.

In the Applicant's preferred alternative, the two projects involve construction of large condominium developments near the Gulf of Mexico on approximately 62 of the total 180.5 acres of wet beach, coastal dune, escarpment, wetlands, and scrub habitats owned by the applicants. An additional 16 acres of platted road rights-of-way, owned by Baldwin County, exist within the project boundary. The project area therefore encompasses about 196.4 acres. Applicant land holdings extend from the Gulf to Alabama Highway 180. Only part of this acreage would actually be developed, totaling about 62.7 acres of ABM habitat. The remaining area, some of which is ABM habitat, would be conserved in perpetuity. Six 20-story condominium towers (two for BCW and four for GHC), thirteen single family units, and a commercial development including about 20 housing units on the upper level would be constructed. Collectively this development would contain 973 living units. Other facilities would include parking lots, access roads, swimming pools, tennis courts, patios, a club house, shops, a proposed medical facility, sidewalks, landscaped areas, small freshwater lakes-detention ponds, trails, and dune walkovers for access to the Gulf of Mexico. The condominium structures would be oriented on an east-west alignment starting approximately 660 to 730 feet north of the Gulf of Mexico. The applicants own approximately 2,844 feet of Gulf frontage. As proposed in the Applicants' preferred alternative, 1,835 feet of that frontage would be developed and 909 feet conserved in perpetuity. The area south of the structures would be sloped by the applicants and native vegetation planted.

All proposed alternatives include measures designed to avoid or minimize take. In addition to these measures, in the applicant's preferred alternative, a planned development adjoining the western boundary of the project, the French Caribbean, would not be constructed and would remain undeveloped as an ABM conservation area. Fort Morgan Paradise Joint Venture owns the French Carribean development, and has offered to forego its construction. As this development has received a Corps of Engineers wetland permit, and was subject to review under section 7 of the Endangered Species Act, there is no ITP required for it.

Based on trapping data and other research, the ABM uses portions (some on a permanent basis, others episodically) of the entire tract of land, except for wetlands, heavily vegetated areas, and northern sections that lack suitable soil for burrowing. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators, permanent human disturbances and fragmentation of habitat and ABM populations. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and misorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, ''taking'' of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicants have prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has not made a preliminary determination whether the issuance of the ITPs is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This determination will be made incorporating public comment received in response to this notice and will be based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: December 20, 2001.

Sam D. Hamilton,

Regional Director.

[FR Doc. 01–31907 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Multiple Habitat Conservation Program Plan and Draft Environmental Impact Statement/Environmental Impact Report for Northwestern San Diego County

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: In anticipation of receiving an application for an incidental take permit for the Multiple Habitat Conservation

Program (MHCP) pursuant to section 10 (a)(1)(B) of the Federal Endangered Species Act of 1973, as amended, the U.S. Fish and Wildlife Service (Service) is requesting public comment on all four volumes of the draft MHCP Plan and a draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) prepared jointly by the Service and San Diego Association of Governments.

The draft MHCP Plan is intended to inform the public of our proposed action to provide a comprehensive multiple-jurisdictional planning program designed to create, manage, and monitor an ecosystem preserve in northwestern San Diego County, California. Local governments within this area have a need for an incidental take permit from the Service to accommodate lawful development projects outside of the preserve system and to accommodate monitoring and maintenance projects within the preserve system that are associated with the MHCP. Our issuance of such a permit is a Federal action that requires documentation under the National Environmental Policy Act.

The analysis provided in the draft EIS/EIR is intended to inform the public of our proposed action and alternatives; address public comments received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

DATES: We must receive your written comments on or before April 29, 2002.

ADDRESSES: Send comments to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You also may submit comments by facsimile to (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carranza, Fish and Wildlife Supervisory Biologist, at the above address; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may request copies of the documents by contacting the office above. You may view the documents, by appointment, during normal business hours (8 a.m. to 5 p.m.), Monday through Friday at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies are also available for viewing at the office of the San Diego Association of Governments, 401 B Street, Suite 800, San Diego, California; and on the world wide web at *http://www.sandag.org.*

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c). Under limited circumstances, the Service may issue permits to authorize incidental take; i.e. take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The MHCP is intended to protect viable populations of native plant and animal species and their habitats in perpetuity through the creation of a preserve system, while accommodating continued economic development and quality of life for residents of northwestern San Diego County. The MHCP is one of several large, multiple-jurisdictional habitat planning efforts in San Diego County, each of which constitutes a ''subregional'' plan under the State of California's Natural Community Conservation Planning (NCCP) Act of 1991. The MHCP encompasses 175 square miles comprised of the following seven incorporated cities: Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista.

All four volumes of the MHCP Plan and a draft EIS/EIR prepared jointly by the Service and San Diego Association of Governments are being made available for a 120-day public comment period. The MHCP is described in the Public Review Draft MHCP Plan Volume 1 (November 2000). The scientific methods used to prepare the MHCP are provided in the Public Review Draft MHCP Plan Volume II (November 2000). Volume III of the Public Review Draft MHCP Plan is comprised of five draft Subarea Plans for the cities of Carlsbad, Encinitas, Escondido, Oceanside and San Marcos; these subarea plans are analyzed in the draft EIS/EIR. Volume IV of the Public Review Draft MHCP Plan describes the biological monitoring program associated with managing the MHCP preserve system to ensure that all of the species covered by the MHCP will survive into perpetuity.

As described in Volumes I and II of the Public Review Draft MHCP Plan (November 2000) and the draft EIS/EIR, the MHCP would create a preserve system that protects, manages, and monitors 66 percent of coastal sage scrub, 66 percent of chaparral, 80 percent of coastal sage/chaparral mix, and 100 percent of riparian and estuarine habitats in perpetuity. A major component of the preserve is the conservation of 400 to 500 acres of contiguous coastal sage scrub centered around the cities of Carlsbad, Encinitas, and the extreme southwest portion of San Marcos, which supports 16 to 23 pairs of the federally threatened coastal California gnatcatcher [*Polioptila californica californica*]. In addition, 338 acres of coastal sage scrub would be restored in key locations within the preserve area. Overall, 19,871 acres (66 percent) of the natural habitats found in the total MHCP study area would be conserved. As a result, coverage for 60 different listed and non-listed species is being requested under the MHCP.

The MHCP is designed to be implemented through individual Subarea Plans prepared by participating cities. Five of the seven cities (Carlsbad, Encinitas, Escondido, Oceanside, and San Marcos) within the MHCP planning area have prepared draft Subarea Plans which describe the specific mechanisms their respective city will use to implement the MHCP. The City of Vista has not completed their plan; when completed it will require a separate environmental analysis. The City of Solana Beach does not need to prepare a Subarea Plan at this time since they do not anticipate impacting any of the species or habitats covered in the MHCP.

The EIS/EIR considers three alternatives in addition to the preferred alternative/proposed project described above: a reduced preservation alternative, an increased preservation alternative, and a no action alternative.

Under the reduced preservation alternative, the preserve system would be similar to the proposed project, however, the following conservation actions would not occur: preservation of the 400 to 500 acres of contiguous coastal sage scrub in the coastal California gnatcatcher core area and the restoration of 338 acres of coastal sage scrub habitat throughout the MHCP planning area. Overall, 19,371 acres (65 percent) of the habitat in the total MHCP study area would be conserved under this alternative.

Under the increased preservation alternative, all large contiguous areas of habitat, all areas supporting major and critical species populations or habitat areas, and all important functional linkages and movement corridors between them would be conserved. Conservation levels include 89 percent

coastal sage scrub, 93 percent chaparral, 95 percent coastal sage/chaparral mix, and 100 percent riparian and estuarine habitats. Overall, 25,031 acres (84 percent) of the habitat in the total MHCP study area would be conserved under this alternative.

Under the no project alternative, only listed species and habitat occupied by such listed species would receive protection. It was estimated that conservation levels would include 19 percent coastal sage scrub, 31 percent chaparral, and 18 percent coastal sage/chaparral mix. Overall, 8,969 acres (30 percent) of natural habitats in the MHCP study area would be conserved under this alternative.

Once the MHCP program and draft documents are finalized and the participating cities are ready to implement the program and create the preserve system, the participating cities will need to apply for incidental take permits from the Service and California Department of Fish and Game to accommodate lawful development projects outside of the preserve system and monitoring and maintenance projects within the preserve system. At this time, the Service will publish in the **Federal Register** separate notices announcing the receipt of an Incidental Take Permit Application and draft Implementing Agreement for each city when they submit applications. The subregional MHCP and associated Subarea Plans for each city are designed to serve as a multiple species Habitat Conservation Plan (HCP) pursuant to section 10 (a)(1)(B) of the federal Endangered Species Act of 1973, as amended and to meet the requirements of section 2800 of the California Endangered Species Act and the NCCP Act.

The Service invites the public to comment on the draft MHCP Plan and draft EIS/EIR during a 120-day comment period. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. This notice is provided pursuant to section 10(a) of the Endangered Species Act and regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: December 11, 2001.

John Engbring,

Acting Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 01–31199 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–PB–24 1A]

OMB Approval Number 1004–0103; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 1, 2001, the BLM published a notice in the **Federal Register** (66 FR 39787) requesting comments on this proposed collection. The comment period ended on October 1, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0103), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Mineral Materials Disposal (43 CFR 3600, 3601, and 3602).

OMB Approval Number: 1004–0103.

Bureau Form Number: 3600–9.

Abstract: The Bureau of Land Management proposes to extend the currently approved collection of information for the disposal of mineral materials on public lands through sales (sand, gravel, and petrified wood). BLM uses the information the applicants provide to:

(1) Determine if the sale of the mineral materials is in the public interest;

(2) Mitigate any environmental impacts associated with the mineral development;

(3) Get fair market value for the materials sold; and

(4) Prevent the trespass removal of the resource.

Frequency: annually (sometimes monthly for some contracts).

Description of Respondents: Operators desiring sand, gravel, stone, and other mineral materials from public lands under BLM jurisdiction.

Estimated Completion Time: Varies from 15 minutes to several days for large projects, with an average of 30 minutes.

Annual Responses: 4,400.

Application Fee Per Response: 0. There is no filing fee.

Annual Burden Hours: 2,200.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: December 11, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–31933 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PB–24 1A]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 31, 2001, the BLM published a notice in the **Federal Register** (66 FR 39526) requesting comments on this proposed collection. The comment period ended on October 1, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance

Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk officer (1004–0041), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Automated Grazing Application (formerly Grazing Preference Statement) (43 CFR 4130).

OMB Approval Number: 1004–0041.

Bureau Form Number: 4130–3a.

Abstract: The Bureau of Land Management uses the information to provide the opportunity for grazing operators to apply for changes to the grazing schedules in their BLM authorized grazing leases or permits. Also, BLM uses the information to compute grazing fee bills and to determine whether lessees and permittees are complying with the terms and conditions of their leases or permits.

Frequency: annually.

Description of Respondents: Holders of BLM-issued grazing leases and permits.

Estimated Completion Time: Varies from 5 to 30 minutes, with an average of 14 minutes.

Annual Responses: 7,689.

Application Fee Per Response: 0. There is no filing fee.

Annual Burden Hours: 1,794.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: December 11, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–31934 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Extension of Expiring Contracts for Up To One Year

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession permits, with the exception of construction on National Park Service lands, public notice is hereby given that the National Park Service intends to provide visitor services under the authority of a temporary concession contract with a term of up to one year from the date of permit expirations.

SUPPLEMENTARY INFORMATION: The permits listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession permits, with one exception, and pending the development and solicitation of a prospectus for a new concession permit, the National Park Service authorizes continuation of visitor services under a temporary concession contract for a period of up to one year from the expiration of the current concession permit. The exception precludes construction on National Park Service lands, regardless of whether the current permit authorizes such activity, the temporary contract does not affect any rights with respect to selection for execution of a new concession contract.

Concessioner ID No.	Concessioner name	Park
ACAD010	National Park Tours & Acadia National Park Transportation, Inc.	Acadia National Park.
ADAD011	Oli's Trolley	Acadia National Park.
ACAD012	Edward Winterberg	Acadia National Park.
ADAD013	Carriages in the Park, Inc	Acadia National Park.
BICA003	The Marina at Horseshoe Bend	Big Horn Canyon National Recreation Area.
BICA007	Lucon Corporation	Big Horn Cancoy National Recreation Area.
BISC002	Biscayne National Underwater Park, Inc	Biscayne National Park.
BISO002	Eastern National	Big South Fork National Recreation Area.
BISO005	Bernard Terry Station Camp Equine	Big South Fork National Recreation Area.
BISO006	Bernard Terry Bear Creek Equine	Big South Fork National Recreation Area.
BLCA001	Rim House	Black Canyon of the Gunnison National Park.
BLRI009	Parkway Inn, Inc	Blue Ridge Parkway.
CANY008	Canyonlands Natural History Association	Canyonlands National Park.
CANY022	Oars Canyonlands, Inc	Canyonlands National Park.
CANY024	Nixhanen & Jones (Tag a Long Tours)	Canyonlands National Park.
CANY025	NAVTEC Expansions, Inc	Canyonlands National Park.
CANY026	Nixhansen & Jones (Tag a Long Tours)	Canyonlands National Park.
CANY027	3 D River Visions, Inc (Tex's Riverways)	Canyonlands National Park.
CARE003	Capital Reef Natural History Association	Capital Reef National Monument.
COLO003	Period Designs	Colonial National Historic Site.
COLO004	Yorktown Arts Foundation	Colonial National Historic Site.
CHOH002	Swain's Lock	Chesapeake & Ohio Canal National Historic Park.
DEWA002	Dingman's Campground	Delaware Water Gap National Recreation Area.
DINO010	Faron & Wayne Wilkins	Dinosaur National Park.
DINO013	Dinosaur Nature Association	Dinosaur National Park.

Concessioner ID No.	Concessioner name	Park
GATE008	John Maggi	Gateway National Recreation Area.
GLAC004	Belton Chalets	Glacier National Park.
GLAC006	Glacier Wilderness Guide	Glacier National Park.
GLAC010	Edward Desrosier (Sun Tours)	Glacier National Park.
GLCA021	Samaritan Health Service	Glen Canyon National Recreation Area.
GOGA002	Council of American Youth Hostels Fort Mason	Golden Gate National Recreation Area.
GOGA003	Council of American Youth Hostels Fort Barry	Golden Gate National Recreation Area.
GOGA006	Giant Camera	Golden Gate National Recreation Area.
GOSP001	McFarland Distributing	Golden Spike National Historic Site.
GRSA003	Great Sand Dunes Oasis	Great Sand Dunes National Monument.
GRSM007	Smokemont Riding Stables	Great Smokey Mountains National Park.
GRSM008	Smoky Mountains Riding Stables	Great Smoky Mountain National Park.
GRSM011	Lon Nations Deep Creek Riding Stable	Great Smoky Mountains National Park.
GRTE005	American Alpine Club	Grand Teton National Park.
GRTE006	Barker Ewing Scenic Tour	Grand Teton National Park.
GRTE008	Jack Dennis Fishing Trip	Grand Teton National Park.
GRTE010	Fort Jackson Float Trip	Grand Teton National Park.
GRTE011	Heart 6 Ranch Float Trip	Grand Teton National Park.
GRTE012	Jackson Hole Mountain Guide	Grand Teton National Park.
GRTE014	Cresent H Ranch	Grand Teton National Park.
GRTE015	National Park Float Trip	Grand Teton National Park.
GRTE017	OARS Inc	Grand Teton National Park.
GRTE020	Solitude Float Trips	Grand Teton National Park.
GRTE022	Teton Boating Co	Grand Teton National Park.
GRTE034	Wilderness Ventures	Grand Teton National Park.
GRTE038	Teton Valley Ranch Camps	Grand Teton National Park.
GRTE040	Lost Creek Ranch	Grand Teton National Park.
GRTE041	Jackson Hole Trail Rides	Grand Teton National Park.
GRTE043	Boy Scouts of America	Grand Teton National Park.
GRTE045	R Lazy Ranch	Grand Teton National Park.
INDU003	Michiana Industries	Indiana Dunes National Recreation Area.
JODR003	Cache Creek Snowmobile	John D. Rockefeller, Jr. Memorial Parkway.
JODR004	Heart 6 Snowmobile	John D. Rockefeller, Jr. Memorial Parkway.
JODR005	Hidden Basin (Old Faithful Snowmobile)	John D. Rockefeller, Jr. Memorial Parkway.
JODR006	High Country Snowmobile	John D. Rockefeller, Jr. Memorial Parkway.
JODR007	Mountain High Adventures	John D. Rockefeller, Jr. Memorial Parkway.
JODR008	Best Adventures	John D. Rockefeller, Jr. Memorial Parkway.
JODR009	Jackson Hole Snowmobile	John D. Rockefeller, Jr. Memorial Parkway.
JODR010	National Park Adventures	John D. Rockefeller, Jr. Memorial Parkway.
JODR012	Tugwotee Mountain Lodge	John D. Rockefeller, Jr. Memorial Parkway.
JODR013	Rocky Mountain Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR014	Yellowstone Snowmobile	John D. Rockefeller, Jr. Memorial Parkway.
MORA004	John P. Squires	Mount Rainier National Park.
OLYM048	Wildwater River Tours	Olympic National Park.
OLYM057	Olympic Raft and Guide Service	Olympic National Park.
OZAR037	Aker's Ferry Tude Rental	Ozark National Scenic Riverway.
PORE001	Drakes Beach Snack Bar	Point Reyes National Seashore.
PORE002	Five Brooks Stables	Point Rayes National Seashore.
REDW001	American Youth Hostels, Inc	Redwoods National Park.
ROMO003	Andrews, Bicknell & Crothers LLC	Rocky Mountain National Park.
ROMO004	Silver Peaks Enterprises	Rocky Mountain National Park.
ROMO008	Wild Basin Lodge	Rocky Mountain National Park.
ROMO009	Meeker Park Lodge	Rocky Mountain National Park.
ROMO010	Silver Lane Enterprises	Rocky Mountain National Park.
ROMO011	YMCA of the Rockies	Rocky Mountain National Park.
ROMO012	Aspen Lodge & Guest Ranch	Rocky Mountain National Park.
ROMO013	Wind River Ranch	Rocky Mountain National Park.
ROMO016	National Park Village Livery	Rocky Mountain National Park.
ROMO017	Sombrero Ranches, Inc	Rocky Mountain National Park.
ROMO018	Winding River Resort	Rocky Mountain National Park.
ROMO019	Cheley Colorado Camp	Rocky Mountain National Park.
ROMO021	Lane Guest Ranch	Rocky Mountain National Park.
ROMO022	Mountain Prairie Girl Scout Council	Rocky Mountain National Park.
ROMO023	Colorado Outward Bound	Rocky Mountain National Park.
ROMO025	Overland Travel, Inc	Rocky Mountain National Park.
ROMO026	The Road Less Traveled	Rocky Mountain National Park.
ROMO027	Young Life Wilderness	Rocky Mountain National Park.
SAAN001	Los Compadres de San Antonio	San Antonio Mission Historic Park.
SERO001	Eastern National	Southeast Regional Office.
SHEN002	Potomac Appalachian Trail Club	Shenandoah National Park.
USAR001	Division of Vocational Rehabilitation	U.S.S. Arizona Memorial.
VIIS008	Caneel Bay, Inc	Virgin Islands National Park.
VICA002	Black Hills Parks Association	Wind Cave National Park.

Concessioner ID No.	Concessioner name	Park
YUCH001	Eric Arneson E.A. Adventures	Yukon-Charley Rivers National Preserve.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone, 202/565–1210.

Dated: December 7, 2001.

Richard G. Ring,

Associate Director, Park Operations and Education.

[FR Doc. 01–31890 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Extension of Expiring Contracts for Up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23; public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2001. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner ID No.	Concessioner name	Park
ANIA903	Katmai Guide Service	Aniakchak National Monument and Preserve.
ANIA904	King Guiding Service	Aniakchak National Monument and Preserve.
ANIA906	Cinder River Lodge	Aniakchak National Monument and Preserve.
ARO001	Alaska Natural Hist Assn	Alaska Regional Office.
BADL001	Oglala Sioux Tribe (Cedar Pass Lodge)	Badlands National Park.
BAND001	Bandelier Trading, Inc	Badlands National Monument.
BEOL001	Bent's Old Fort Historical Assn	Bent's Old Fort National Historic Site.
BISC002	Biscayne National Underwater Park, Inc	Biscayne National Park.
BISO001	LeConte Lodge Limited Partnership	Big South Fork National Recreation Area.
BISO003	Bobby Gene & Gretta York	Big South Fork National Recreation Area.
BISO005	Bernard Terry, The View Station Camp	Big South Fork National Recreation Area.
BISO006	Bernard Terry, The View Bear Creek	Big South Fork National Recreation Area.
BRCA001	Bryce Canyon Natural History Assn	Bryce Canyon National Park.
BUFF002	Lost Valley C & L	Buffalo National River.
BUFF003	Bennett's Canoe Rental	Buffalo National River.
BUFF004	Gordon Motel, Inc	Buffalo National River.
BUFF005	Silver Hill Canoe	Buffalo National River.
BUFF007	Buffalo River Outfitters	Buffalo National River.
BUFF009	Buffalo Outdoor Center	Buffalo National River.
BUFF010	Buffalo River Outfitters	Buffalo National River.
BUFF011	Riverview Motel Canoe	Buffalo National River.
BUFF012	Buffalo Ridge Canoe Rental	Buffalo National River.
BUFF014	Crockett's Canoe Rental	Buffalo National River.
BUFF015	Buffalo Camp and Canoe	Buffalo National River.
BUFF016	Dillard's Ozark Outfitters	Buffalo National River.
BUFF018	Keller's Canoes	Buffalo National River.
BUFF019	Dirst Canoe Rental	Buffalo National River.
BUFF022	Wild Bill's Outfitter	Buffalo National River.
BUFF026	Rose Trout Dock	Buffalo National River.
BUFF027	Cotter Trout Dock	Buffalo National River.
BUFF028	Buffalo River Outfitters	Buffalo National River.
BUFF030	Sportsman's Resort	Buffalo National River.
BUFF031	Newland Float Trips	Buffalo National River.
BUFF032	Wild Bill's Outfitter	Buffalo National River.
BUFF033	Woodsman's Fishing	Buffalo National River.
BUFF035	Stanley Canoes Inc	Buffalo National River.
BUIS001	Southern Seas, Inc	Buck Island Reef National Monument.
BUIS006	Terero, Inc	Buck Island Reef National Monument.
BUIS008	Llewellyn Westerman	Buck Island Reef National Monument.
BUIS014	Francis J. Waters	Buck Island Reef National Monument.
BUIS015	Milemark, Inc	Buck Island Reef National Monument.
BUIS019	Carl Punzenberger	Buck Island Reef National Monument.
CACO002	The Benz Corporation	Cape Cod National Seashore.
CACO006	Hosteling International	Cape Cod National Seashore.
CAHA001	Avon-Thornton Limited Partnership	Cape Hatteras National Seashore.
CAHA002	Cape Hatteras Fishing Pier, Inc	Cape Hatteras National Seashore.
CAHA004	Oregon Inlet Fishing Center, Inc	Cape Hatteras National Seashore.

Concessioner ID No.	Concessioner name	Park
CALO003	Morris Marina, Kabin Kamps & Ferry Svc	Cape Lookout National Seashore.
CALO005	Alger G. Willis Fishing Camps, Inc	Cape Lookout National Seashore.
CHAM001	My Other Squeeze	Chamizal National Monument.
CHAM003	Triple L Rolling Restaurant	Chamizal National Monument.
CHAM004	Donut Factory	Chamizal National Monument.
CHAM005	Party Time Ice Cream	Chamizal National Monument.
CHAM006	Senor Elote	Chamizal National Monument.
CHAM007	Coronado Prime Meats	Chamizal National Monument.
CHAM008	Mama's Papas	Chamizal National Monument.
CHAM009	Mando's Concessions	Chamizal National Monument.
CHAT001	Chattahoochee Outdoor Center, Inc	Chattahoochee River National Recreation Area.
CHIS002	Channel Islands Aviation, Inc	Channel Islands National Park.
COLM001	Colorado National Monument Assn	Colorado National Monument.
COLO005	Eastern National	Colonial National Historic Park.
COLO001	Yorktown Shoppe	Colonial National Historical Park.
CUVA001	American Youth Hostels	Cuyahoga Valley.
DENA030	Kantishna Air Taxi	Denali National Park and Preserve.
DENA005	Rainier Mountaineering, Inc	Denali National Park and Preserve.
DENA006	Mountain Trip, Inc	Denali National Park and Preserve.
DENA008	Alaska Mountaineering School	Denali National Park and Preserve.
DENA009	Fantasy Ridge Alpinism, Inc	Denali National Park and Preserve.
DENA010	American Alpine Institute	Denali National Park and Preserve.
DENA011	National Outdoor Leadership School	Denali National Park and Preserve.
DENA013	Wallace and Jerryne Cole (CampDenali and North Face Lodge.	Denali National Park and Preserve.
DENA015	Kantishna Roadhouse Company	Denali National Park and Preserve.
DENA016	Denali Backcountry Lodge, Inc	Denali National Park and Preserve.
DEWA004	Pepsi Cola Company	Delaware Water Gap National Recreation Area.
DINO001	Adventure Bound, Inc	Dinosaur National Monument.
DINO002	American River Touring Association	Dinosaur National Monument.
DINO003	Colorado Outward Bound School	Dinosaur National Monument.
DINO005	Holiday River Expeditions, Inc	Dinosaur National Monument.
DINO006	Don Hatch River Expeditions, Inc	Dinosaur National Monument.
DINO008	Dinosaur River Expeditions, Inc	Dinosaur National Monument.
DINO009	OARS, Inc	Dinosaur National Monument.
DINO011	National Outdoor Leadership School, Inc	Dinosaur National Monument.
DINO012	Sheri Griffith River Expeditions, Inc	Dinosaur National Monument.
DINO014	Eagle Outdoor Sports	Dinosaur National Monument.
DINO016	Adrift Adventures, Inc	Dinosaur National Monument.
FOFR001	Fort Frederican Assn	Fort Frederica National Monument.
FOLA001	Fort Laramie Natural History Association	Fort Laramie National Historic Site.
GUMO001	Carlsbad Caverns Association	Guadalupe Mountains National Monument.
FOMC001	Evelyn Hill, Inc	Fort McHenry National Monument and Historic Site.
FOSU001	Fort Sumter Tours, Inc	Fort Sumter National Monument.
GAAR001	Richard Guthrie, Reg. Guide	Gates of the Arctic National Park and Preserve.
GAAR002	Highlander Guide Service	Gates of the Arctic National Park and Preserve.
GEWA001	George Washington Birthplace Assn	George Washington National Monument.
GLAC003	Muleshoe Outfitters	Glacier National Park.
GLAC004	Belton Chalets	Glacier National Park.
GLAC004A	Glacier Wilderness Guides, Inc	Glacier National Park.
GLBA001	Glacier Bay Park Concessions	Glacier Bay National Park and Preserve.
GLBA008	Alaska Discovery, Inc	Glacier Bay National Park and Preserve.
GLBA009	Alaska Discovery, Inc	Glacier Bay National Park and Preserve.
GLBA010	Gary C. Gray, Reg. Guide	Glacier Bay National Park and Preserve.
GLBA011	Chilkat Guides	Glacier Bay National Park and Preserve.
GLBA012	Colorado River/Trail Exp., Inc	Glacier Bay National Park and Preserve.
GLBA013	James Henry River Journeys	Glacier Bay National Park and Preserve.
GLBA014	Mountain Travel/Sobek	Glacier Bay National Park and Preserve.
GLBA015	Chicagaof Charters	Glacier Bay National Park and Preserve.
GLBA016	Grand Pacific Charters	Glacier Bay National Park and Preserve.
GLBA017	Wilderness River Outfitters	Glacier Bay National Park and Preserve.
GLBA018	Glacier Guides	Glacier Bay National Park and Preserve.
GLBA019	Marine Adventure Sailing Tours	Glacier Bay National Park and Preserve.
GLBA020	Northern Lights Haven	Glacier Bay National Park and Preserve.
GLBA021	Seawind Charters	Glacier Bay National Park and Preserve.
GLBA025	Princeton Hall, Ltd	Glacier Bay National Park and Preserve.
GLBA026	Lisianski Charters	Glacier Bay National Park and Preserve.
GLBA027	Gustavus Marine	Glacier Bay National Park and Preserve.
GLBA028	Elfin Cove Sportfishing Lodge	Glacier Bay National Park and Preserve.
GLBA029	Johnny's East River Lodge	Glacier Bay National Park and Preserve.
GLBA030	Dolphin Charters	Glacier Bay National Park and Preserve.
GLBA031	Glacier Bay Country Inn	Glacier Bay National Park and Preserve.
GLBA032	Sea Wolf Wilderness Adventures	Glacier Bay National Park and Preserve.
GLBA033	Gary C. Gray, Reg. Guide	Glacier Bay National Park and Preserve.

Concessioner ID No.	Concessioner name	Park
GLBA035	Glacier Bay Sea Kayaks	Glacier Bay National Park and Preserve.
GLBA037	Clipper Cruise Line	Glacier Bay National Park and Preserve.
GLBA038	Special Expeditions	Glacier Bay National Park and Preserve.
GLBA039	Alaska Sightseeing/Cruise West	Glacier Bay National Park and Preserve.
GLBA041	Glacier Bay Park Concessions	Glacier Bay National Park and Preserve.
GLBA044	Glacier Bay Adventures	Glacier Bay National Park and Preserve.
GLBA901	Gary C. Gray, Reg. Guide	Glacier Bay National Park and Preserve.
GLBA902	John H. Latham, Reg. Guide	Glacier Bay National Park and Preserve.
GLCA017	Arizona Dept. of Economic Security	Glen Canyon National Recreation Area.
GLCA020	High Desert Adventures	Glen Canyon National Recreation Area.
GRSM001	Cades Cove Campground Store, Inc	Great Smoky Mountains National Park.
GRSM003	Tammy Shular	Great Smoky Mountains National Park.
GRSM004	Cades Cove Riding Stables, Inc	Great Smoky Mountains National Park.
GRSM005	Cherokee Boys Club	Great Smoky Mountains National Park.
GRSM006	McCarter's Riding Stables, Inc	Great Smoky Mountains National Park.
GRSM007	Smokemont Riding Stables, Inc	Great Smoky Mountains National Park.
GRSM008	Smoky Mountain Riding Stables, Inc	Great Smoky Mountains National Park.
GRSM011	Lon Nations (Deep Creek Riding Stables)	Great Smoky Mountains National Park.
GRSM010	Great Smoky Mountains Natural History Assn	Great Smoky Mountains National Park.
GRTE003	Rex G. & Ruth G. Maughan (Signal Mountain Lodge)	Grand Teton National Park.
GUIS001	Dudley Food & Beverage, Inc	Gulf Islands National Seashore.
GUIS003	Pan Isles, Inc	Gulf Islands National Seashore.
HAVO002	Hawaii Natural History Assn	Hawaii Volcanoes National Park.
HOSP001	City of Hot Springs Advertising and Promotions Comm	Hot Springs National Park.
ISRO001	The Royale Line, Inc	Isle Royale National Park.
ISRO006	Isle Royale Seaplane Service, Inc	Isle Royale National Park.
ISRO007	Grand Portage-Isle Royale Transportation, Line	Isle Royale National Park.
JEFF001	Compass Group USA	Jefferson National Expansion Memorial.
JEFF002	Jefferson National Expansion Historical Assn	Jefferson National Expansion Memorial.
KALA001	Molokai Mule Ride, Inc	Kalaupapa National Historical Park.
KATM002	No See Um Lodge	Katmai National Park.
KATM004	Shaska Ventures Inc	Katmai National Park.
KATM005	Branch River Air Service	Katmai National Park.
KATM006	Bristol Bay Sportfishing	Katmai National Park.
KATM007	Mike Cusack's King Salmon Lodge	Katmai National Park.
KATM901	Rainbow River Lodge	Katmai National Park and Preserve.
KATM902	King Guiding Service	Katmai National Park and Preserve.
LABE001	Lava Beds Natural History Assn	Lave Beds National Monument.
LACL002	Alaska Wilderness Trips	Lake Clark National Park.
LACL901	Northward Bound	Lake Clark National Park.
LAME001	Forever Resorts, Inc (Cottonwood Cove Resort)	Lake Mead National Recreation Area.
LAME005	Forever Resorts, Inc (Callville Bay Resort)	Lake Mead National Recreation Area.
LAME007	Lake Mohave Resort	Lake Mead National Recreation Area.
LIBI003	Institute for Micro Business	Little Bighorn National Monument.
MEVE001	Mesa Verde Company (Aramark)	Mesa Verde National Park.
MORA001	Rainier Mountaineering	Mount Rainier National Park.
MORU001	Amfac Recreational Services, Inc	Mount Rushmore National Memorial.
MWRRO001	Eastern NP & Monuments	Midwest Regional Office.
NATR001	Little Mountain Service Center, Inc	Natchez Trace Parkway.
NATR004	Craftsmen's Guild of Mississippi, Inc	Natchez Trace Parkway.
NERO001	Eastern National	Northeast Regional Office.
NOAT901	Midnight Sun Adventures	Noatak National Preserve.
NOAT904	Arctic Rivers Guide Service	Noatak National Preserve.
NOAT906	Mountain Monarchs of Alaska	Noatak National Preserve.
OZAR002	Jack's Fork Canoe Rental	Ozark National Scenic Riverway.
OZAR005	Wild River Canoe	Ozark National Scenic Riverway.
OZAR007	Silver Arrow Canoe Rental	Ozark National Scenic Riverway.
OZAR008	Round Spring Canoe	Ozark National Scenic Riverway.
OZAR010	Deer Run Campground	Ozark National Scenic Riverway.
OZAR011	Current River Canoe	Ozark National Scenic Riverway.
OZAR013	Eminence Canoe Rental	Ozark National Scenic Riverway.
OZAR014	Windy's Canoe Rental	Ozark National Scenic Riverway.
OZAR015	Big Spring Lodge	Ozark National Scenic Riverways.
OZAR018	Two Rivers Canoe	Ozark National Scenic Riverway.
OZAR020	Jadwin Canoe Rental	Ozark National Scenic Riverway.
OZAR023	Hawthorne Canoe Rental	Ozark National Scenic Riverway.
OZAR024	The Landing Canoe	Ozark National Scenic Riverway.
OZAR025	Big Spring Canoe Rental	Ozark National Scenic Riverway.
OZAR028	Running River Canoe	Ozark National Scenic Riverway.
OZAR036	Maggard Canoe Rental	Ozark National Scenic Riverway.
OZAR040	Carr's Tube Rental	Ozark National Scenic Riverway.
OZAR049	Smalley's Motel Tube	Ozark National Scenic Riverway.
OZAR050	Big Spring River Camp	Ozark National Scenic Riverway.
REDW001	American Youth Hostels, Inc	Redwoods National Park.

Concessioner ID No.	Concessioner name	Park
ROLA003	Ross Lake Resort, Inc	Ross Lake National Recreation Area.
ROMO005	Rockey Mounain Nature Assn	Rocky Mountain National Park.
SLBE005	Manitou Island Transit	Sleeping Bear Dunes National Lakeshore.
SLBE008	Blough Firewood	Sleeping Bear Dunes National Lakeshore.
USAR001	Division of Vocational Rehabilitation	U.S.S. Arizona Memorial.
VAFO001	Romano's School Bus Service, Inc	Valley Forge National Historic Site.
VIIS007	Maho, Inc	Virgin Islands National Park.
WHSA001	White Sands Souvenirs	White Sands National Monument.
WICA001	State of South Dakota, Dept. of Human Res	Wind Cave National Park.
WRBR001	Kitty Hawk Aero Tours, Inc	Wright Brothers National Monument.
YELL102	Beardsley Outfitting and Guilding Service	Yellowstone National Park.
YELL103	Triangle X Ranch	Yellowstone National Park.
YELL104	Horse Creek Ranch	Yellowstone National Park.
YELL105	Bear Paw Outfitters	Yellowstone National Park.
YELL106	Jackson Hole Llamas	Yellowstone National Park.
YELL107	Wyoming Wilderness Outfitters	Yellowstone National Park.
YELL108	Fox Creek Pack Station	Yellowstone National Park.
YELL110	Diamond J. Ranch	Yellowstone National Park.
YELL113	7D Ranch	Yellowstone National Park.
YELL114	Wilderness Connection	Yellowstone National Park.
YELL115	Gary Fales Outfitting	Yellowstone National Park.
YELL117	Mountain Trails Outfitters	Yellowstone National Park.
YELL118	Yellowstone Mountain Guides	Yellowstone National Park.
YELL120	Slough Creek Outfitters	Yellowstone National Park.
YELL121	Yellowstone Llamas	Yellowstone National Park.
YELL122	Sheep Mesa Outfitters	Yellowstone National Park.
YELL123	Castle Creek Outfitters & Guide Service	Yellowstone National Park.
YELL124	Jake's Horses	Yellowstone National Park.
YELL125	Big Bear Lodge, Inc	Yellowstone National Park.
YELL126	Heimer Outfitting	Yellowstone National Park.
YELL127	Medicine Lake Outfitters	Yellowstone National Park.
YELL128	North Yellowstone Outfitters	Yellowstone National Park.
YELL130	Skyline Guest Ranch	Yellowstone National Park.
YELL131	Hell's A Roarin' Outfitters	Yellowstone National Park.
YELL132	Nine Quarter Circle Ranch	Yellowstone National Park.
YELL134	John Henry Lee Outfitters	Yellowstone National Park.
YELL137	Wilderness Pack Trips	Yellowstone National Park.
YELL138	Rendezvous Outfitters	Yellowstone National Park.
YELL140	Black Otter Guide Service	Yellowstone National Park.
YELL141	Lost Fork Ranch	Yellowstone National Park.
YELL144	Lone Mountain Ranch	Yellowstone National Park.
YELL145	Thorofare Outfitting	Yellowstone National Park.
YELL146	K Bar Z Guest Ranch	Yellowstone National Park.
YELL147	Press Stephens	Yellowstone National Park.
YELL148	Teton Ridge Ranch	Yellowstone National Park.
YELL149	Tom Toolson	Yellowstone National Park.
YELL156	John R. Winter Outfitter and Guide	Yellowstone National Park.
YELL157	Beartooth Plateau Outfitters	Yellowstone National Park.
YELL158	Wilderness Trails	Yellowstone National Park.
YELL159	Bear Track Outfitters	Yellowstone National Park.
YELL160	MJ Outfitters	Yellowstone National Park.
YELL162	Grizzly Ranch	Yellowstone National Park.
YELL164	Gallatin Way Ranch	Yellowstone National Park.
YELL165	Gunsel Horse Adventures	Yellowstone National Park.
YELL166	Elkhorn Ranch	Yellowstone National Park.
YELL168	Llamas of West Yellowstone	Yellowstone National Park.
YELL169	Shoshone Lodging Outfitters	Yellowstone National Park.
YELL170	Diamond K Outfitters	Yellowstone National Park.
ZION004	Zion Natural History Association	Zion National Park.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/565–1210.

Dated: November 29, 2001.

Cynthia Orlando,

Concession Program Manager, Park Operations and Education.

[FR Doc. 01–31891 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Extension of Expiring Contracts for Up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed one year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: All contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the development and public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed one year under the terms and conditions of current contracts as amended. The continuation of operations does not affect any rights with respect to selection for execution of a new concession contract.

Concessioner Id No.	Concessioner name	Park
ACAD001	The Acadia Corporation	Acadia National Park.
AMIS002	Lake Amistad Resort	Amistad National Recreation Area.
BISO002	Eastern National	Big South Fork National Recreation Area.
AMIS003	Rough Canyon Marina	Amistad National Recreation Area.
BLRI001	Southern Highland Guild	Blue Ridge Parkway.
BLRI002	Northwest Trading Post	Blue Ridge Parkway.
BLRI009	Parkway Inn, Inc	Blue Ridge Parkway.
CACA001	The Cavern Supply Co	Carlsbad Caverns National Park.
CACO003	Town of Truro	Cape Cod National Seashore.
CACO004	Charles W. Silva	Cape Cod National Seashore.
CAHA003	Hatteras Island Hotel	Cape Hatteras National Seashore.
CHOH001	Fletcher's Boat House	Chesapeake & Ohio Canal National Historic Park.
CUIS001	Lang Seafood, Inc	Cumberland Island National Seashore.
CURE001	Elk Creek Marina, Inc	Curecanti National Recreation Area.
DEVA001	Amfac Hotels & Resorts	Death Valley National Park.
DEVA002	Amfac Hotels & Resorts	Death Valley National Park.
EVER001	TW Recreational Services	Everglades National Park.
EVER002	Everglades Boat Company	Everglades National Park.
FIIS001	Howard T. Rose	Fire Island National Seashore.
FIIS004	Davis Park Ferry	Fire Island National Seashore.
GATE001	Jamaica Bay Riding Co	Gateway National Recreation Area.
GATE002	Shields and Dean	Gateway National Recreation Area.
GATE013	Shields and Dean	Gateway National Recreation Area.
GLAC001	Glacier Park Boat Co	Glacier National Park.
GLCA001	Aramark (Wilderness River Adv)	Glen Canyon National Recreation Area.
GLCA003	Aramark (Wahweap Lodge)	Glen Canyon National Recreation Area.
GOGA001	Blue & Gold Fleet, LP	Golden Gate National Recreation Area.
GOGA002	Council of American Youth Hostels (Fort Mason)	Golden Gate National Recreation Area.
GOGA003	Council of American Youth Hostels (Fort Barry)	Golden Gate National Recreation Area.
GOGA008	Louis' Restaurant	Golden Gate National Recreation Area.
GRCA001	Amfac Hotels and Resorts	Grand Canyon National Park.
GRCA004	Grand Canyon Trail Rides Verkamps, Inc	Grand Canyon National Park.
GRCA005	Grand Canyon Trail Rides Verkamps, Inc	Grand Canyon National Park.
GRSM002	LeConte Lodge LP	Great Smoky Mountains National Park.
GRTE009	Exum Mountain Guides	Grand Teton National Park.
GWMP003	Belle Haven Marina	George Washington Memorial Parkway.
HOSP004	Libbey Memorial	Hot Springs National Park.
LAME002	Lakeshore Trailer Village	Lake Mead National Recreation Area.
LAME003	Seven Resorts, Inc. (Lake Mead Resort)	Lake Mead National Recreation Area.
LAME006	Las Vegas Boat Harbor	Lake Mead National Recreation Area.
LAME008	Overton Beach Resort	Lake Mead National Recreation Area.
LAME010	Seven Resorts, Inc. (Echo Bay Resort)	Lake Mead National Recreation Area.
LAMR002	Marina at Lake Meredith	Lake Meredith National Recreation Area.
MACA001	Miss Green River Boat	Mammoth Cave National Park.
MUWO001	ARAMARK Leisure Services, Inc	Muir Woods National Monument.
NACE003	Buzzard's Point Boatyard	National Capital Parks East.
OLYM001	ARAMARK Corp	Olympic National Park.
OLYM005	Crescent West, Inc	Olympic National Park.
OLYM008	Sol Duc Hot Springs	Olympic National Park.
OZAR001	Alley Spring Canoe	Ozark National Scenic Riverway.
OZAR012	Aker's Canoe Rental	Ozark National Scenic Riverway.
PAIS001	Padre Island Park Co	Padre Island National Seashore.
PEFO001	Amfac Hotel & Resorts	Petrified Forest National Park.
PRWI001	Prince William Travel Trailer Village	Prince William Forest Park.
ROCR003	Golf Course Specialists	Rock Creek National Park.
ROMO001	Rex and Ruth Maughan (Trail Ridge Store)	Rocky Mountain National Park.
ROMO002	Hi Country Stables	Rocky Mountain National Park.
SERO	Eastern National	Southeast Regional Offices.
TICA001	Carl and Betsy Wagner	Timpanogos Cave National Monument.
VIIS001	Caneel Bay, Inc	Virgin Islands National Park.
VIIS008	Caneel Bay, Inc	Virgin Islands National Park.
WHIS001	Oak Bottom Marina	Whiskeytown National Park.
YELL002	Hamilton Stores, Inc	Yellowstone National Park.

Concessioner Id No.	Concessioner name	Park
ZION001	Bryce/Zion Trail Rides	Zion National Park.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/565–1210.

Dated: November 28, 2001.

Richard G. Ring,

Associate Director, Park Operations and Education.

[FR Doc. 01–31892 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–443]

Certain Flooring Products; Notice of Commission Decisions to Review Portions of a Final Initial Determination and to Extend by 30 Days the Target Date for Completion of the Investigation; Schedule for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant Roysol's motion to join the November 30, 2001, motion to strike and alternative motion to reply of Unilin and Pergo; to grant complainants' motion to respond to the November 30, 2001, motion of Unilin and Pergo; to grant Unilin and Pergo's motion to reply; to deny Unilin and Pergo's motion to strike; to extend the target date for completion of the investigation by 30 days to March 7, 2002; and to review portions of a final initial determination (ID) of the presiding administrative law judge (ALJ) finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., or David Wilson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012 and (202) 708–2310, respectively. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on December 27, 2000, based on a complaint filed on behalf of Alloc, Inc., Racine, Wisconsin; Berry Finance N.V., Oostrozebeke, Belgium; and Välinge Aluminum AB, Viken, Sweden (collectively ''complainants''). 66 FR 1155 (2001). The notice of investigation was published in the **Federal Register** on January 5, 2001. *Id.* The complaint, as supplemented, alleged violations of section 337 in the importation, the sale for importation, and the sale within the United States after importation of certain flooring products by reason of infringement of claims 1–3, 5–6, 8–12, 14–15, 17–36, and 38–41 of U.S. Letters Patent 5,860,267 (''the '267 patent'') and claims 1–14 of U.S. Letters Patent 6,023,907 (''the '907 patent''). *Id.* The Commission named seven respondents: Unilin Décor N.V., Wielsbeke, Belgium; BHK of America, Inc., Central Valley, NY; Meister-Leisten Schulte GmbH, Rüthen, Germany (collectively, Unilin); Pergo, Inc., Raleigh, NC (''Pergo''); Akzenta Paneele + Profile GmbH, Kaisersesch, Germany (''Akzenta''); Tarkett, Inc., Whitehall, PA; and Roysol, Saint-Florentin, France (''Roysol'').

On March 5, 2001, the ALJ issued an ID (ALJ Order No. 8) granting complainants' motion to amend the complaint and notice of investigation to add allegations of infringement of claims 1, 8, 13–14, 21, 26–27, 34, 39–41, and 48 of U.S. Letters Patent 6,182,410 (''the '410 patent''). On July 10, 2001, the ALJ issued an ID (ALJ Order No. 26) granting complainants' motion for summary determination on the economic prong of the domestic industry requirement. Those IDs were not reviewed by the Commission. An evidentiary hearing was held from July 26, 2001, through August 1, 2001. The ALJ heard closing arguments on October 16, 2001. On October 19, 2001, the ALJ issued an ID (ALJ Order No. 30) granting complainants' unopposed motion to terminate the investigation with respect to claims 1–3, 5–6, 8–12, 14–15, 17–18, 20–22, 24–36, 38, and 40–41 of the '267 patent; claims 4–14 of the '907 patent; and claims 8, 13–14, 21, 27, 34, and 40 of the '410 patent. On October 25, 2001, the ALJ issued an ID (ALJ Order No. 31) terminating the investigation as to respondent Tarkett, Inc. Those IDs were not reviewed by the Commission. The only asserted claims remaining in the investigation are claims 19, 23, and 39 of the '267 patent, claims 1–3 of the '907 patent, and claims 1, 26, 39, 41, and 48 of the '410 patent.

The ALJ issued his final ID on November 2, 2001, concluding that there was no violation of section 337, based on the following findings: (a) Complainants have not established that any of the asserted claims are infringed by any of the respondents; (b) respondents have failed to establish that the asserted claims of each of the '267, '907, and '410 patents are not valid; (c) no domestic industry exists that exploits any of the '267, '907, and '410 patents; and (d) it has not been established that complainants misused any of the patents in issue. The ALJ also made recommendations regarding remedy and bonding in the event the Commission concludes there is a violation of section 337.

On November 15, 2001, complainants and the Commission investigative attorney (''IA'') petitioned for review of the ID. On November 23, 2001, respondents Unilin, Pergo, Roysol, and Akzenta, and complainants filed responses to the petitions for review. On November 30, 2001, Unilin and Pergo moved to strike portions of complainants' response of November 23, 2001, and in the alternative moved for leave to reply to complainants' response. On December 4, 2001, Respondent Roysol moved to join the motion to strike. On December 10, 2001, complainants responded to the motion to strike. The Commission has determined to grant Roysol's motion to join, to grant Unilin and Pergo's motion to reply and complainants' motion to respond, and to deny the motion to strike.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review:

(1) The ID's construction of the asserted claims of the '410 patent;

(2) The ID's construction of the asserted claims of the '267 and '907 patents, except not to review the ID's construction of those claims apart from 35 U.S.C. 112, ¶ 6;

(3) The ID's infringement conclusions with respect to the '410, '267, and '907 patents, except not to review the ID's conclusions that (a) the asserted claims of the '267 and '907 patents are not infringed when those claims are construed apart from 35 U.S.C. 112, ¶ 6 and (b) complainants have not established that there are no substantial noninfringing uses for the accused products and hence there is no contributory infringement;

(4) The ID's validity conclusions with respect to the '267, '410, and '907 patents, except not to review the ID's validity conclusions when the asserted claims of the '267 and '907 patents are construed apart from 35 U.S.C. 12, ¶ 6;

(5) The ID's conclusions with respect to the technical prong of the domestic industry requirement with respect to the '410, '267, and '907 patents, except not to review the ID's conclusions that complainants have failed to establish the technical prong of the domestic industry requirement when the asserted claims of the '267 and '907 patents are construed apart from 35 U.S.C. 112, ¶ 6.

The Commission has also determined to review the procedural question of whether complainants waived the issue of whether the accused products infringe the asserted claims of the patents in controversy to the extent that the asserted claims are construed under 35 U.S.C, 112, ¶ 6 to cover equivalents of the structure disclosed in the specification, *viz.,* equivalents of a mechanical joint with play, by failing to raise the issue before the ALJ.

The Commission has determined not to review the remainder of the ID, including the ID's conclusions with respect to patent misuse.

On review, the Commission requests briefing based on the evidentiary record on all issues under review and is particularly interested in receiving answers to the following questions, with all answers cited to the evidentiary record. For purposes of focusing the briefing, the questions present tentative resolution of some claim construction issues (*e.g.,* applicability of 35 U.S.C. 112, ¶ 6 and identification of claimed functions associated with means-plus-function limitations).

1. Have complainants waived the issue of whether, if the asserted claims of the '907, '267, or

'410 patents are construed under 35 U.S.C. 112, ¶ 6 to require ''play,'' flooring panels without play are ''equivalent'' for purposes of 112, ¶ 6 to flooring panels with ''play'' by failing to raise the issue before the ALJ?

2. Assuming for purposes of this question that 35 U.S.C. 112, ¶6 applies to the limitation ''the

two panels are * * * mechanically locked to each other in a second direction, that is at right angles to said first direction and to the adjacent joint edges, as a result of a first locking member disposed at one of the adjacent edges being connected to a second locking member disposed at the other one of the adjacent edges, and * * * being displaceable in relation to each other in the direction of the adjacent joint edges'' in claim 1 of the '907 patent (and dependent claims 2 and 3), and that the function of the ''first locking member'' and ''second locking member'' is that when the locking members are connected, ''the two panels are * * * mechanically locked to each other'' in the horizontal direction at right angles to the adjacent joint edges and the two panels are ''displaceable in relation to each other in the direction of the adjacent joint edges'':

What are the corresponding structure(s) disclosed in the specification that perform the function identified above?

Construing the limitation under 35 U.S.C. 112, ¶6 using the above-stated function and the corresponding structure(s) that you identified, please answer the following questions: (In your response, please address the 35 U.S.C. 112, ¶6 equivalents to the corresponding structures)

(a) Do respondents infringe any of the three claims?

(b) Are the claims invalid?

(c) Do complainants meet the technical prong of the domestic industry requirement as to claims 1, 2, or 3?

3. Assuming that 35 U.S.C. 112, ¶6 applies to the ''locking means'' of claim 1 of the '410 patent, and that the function of the claimed ''locking means'' is (a) ''Forming a first mechanical connection for locking said adjacent edges to each other in a vertical direction,'' (b) ''forming a second mechanical connection for locking said adjacent edges to each other in a horizontal direction at right angles to said edges,'' (c) ''operat[ing] as a one-way snap lock in said horizontal direction,'' and (d) ''enabl[ing] said adjacent panels,'' when connected by the first and second connections, to be rotated ''so as to move the locking element out of the locking groove in order to unlock said one-way snap lock'':

What are the corresponding structure(s) disclosed in the specification that perform the function identified above?

Construing the limitation under 35 U.S.C. 112, ¶6 using the above-stated function and the corresponding structure(s) that you identified, please answer the following questions: (In your response, please address the 35 U.S.C. 112, ¶6 equivalents to the corresponding structures)

(a) Do respondents' products infringe claim 1?

(b) Is claim 1 invalid?

(c) Do complainants meet the technical prong of the domestic industry requirement as to claim 1?

4. Assuming for purposes of this question that 35 U.S.C. 112, ¶6 applies to the ''locking means'' of claim 26 of the '410 patent, and that the function of the claimed ''locking means'' is (a) ''releasably locking,'' (b) ''forming a first mechanical connection for locking said adjacent first edges to each other in a vertical direction,'' (c) ''forming a second mechanical connection for locking said adjacent short edges to each other in a horizontal direction at right angles to said first edges,'' and (d) ''operat[ing] as a one-way snap lock in said horizontal direction'':

What are the corresponding structure(s) disclosed in the specification that perform the function identified above?

Construing the limitation under 35 U.S.C. 112, ¶6 using the above-stated function and the corresponding structure(s) that you identified, please answer the following questions: (In your response, please address the 35 U.S.C. 112, ¶6 equivalents to the corresponding structures)

(a) Do respondents' products infringe claim 26?

(b) Is claim 26 invalid?

(c) Do complainants meet the technical prong of the domestic industry requirement as to claim 26?

5. Assuming for purposes of this question that 35 U.S.C. 112, ¶6 applies to the ''*means for* mechanically locking * * *'' limitation of claim 39 of the '410 patent:

What is the function recited in claim 39 for this means?

What are the corresponding structure(s) disclosed in the specification that perform the function?

Are there other means-plus-function limitations in claim 39? If so, for each limitation identify the recited function and corresponding structure(s) disclosed in the specification that perform the function.

Construing the limitation under 35 U.S.C. 112, ¶6 using the function(s) and

the corresponding structure(s) that you identified, please answer the following questions: (In your response, please address the 35 U.S.C. 112, ¶6 equivalents to the corresponding structures)

Do respondents' products infringe claim 39?

Is claim 39 invalid?

Please repeat the above analysis for dependent claims 41 and 48.

Do complainants meet the technical prong of the domestic industry requirement as to claim 39?

6. Assuming for purposes of this question that 35 U.S.C. 112, ¶6 does *not* apply to the ''*means for* mechanically locking * * *'' limitation of claim 39 or to any other means-plus-function limitations that you identified for this claim in the previous question:

How should claims 39, 41, and 48 be construed?

So construed, do respondents' products infringe claims 39, 41, or 48?

So construed, are claims 39, 41, or 48 invalid?

So construed, do complainants meet the technical prong of the domestic industry requirement as to claim 39?

7. Have complainants established that respondents possessed specific intent to encourage another's infringement, *i.e.,* have complainants shown (1) that each respondent's actions induced infringing acts and (2) that each respondent knew or should have known his actions would induce actual infringements?

Each party is requested to provide citations to the record for evidentiary support. *E.g.,* in particular a citation is requested for the following exhibits referenced in the parties' petitions for review and responses: the June 21, 2000, opinion letter from Akzenta and Tarkett's counsel (IA's petition at 29) and Roysol's patent and flooring panels (Roysol's response at 16).

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's November 2, 2001, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on January 10, 2002. Reply submissions must be filed no later than the close of business on January 17, 2002. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–210.45).

Issued: December 20, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–31978 Filed 12–27–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–73]

Steel; Import Investigations

Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission—

(1) Determines pursuant to section 202(b) of the Tariff Act of 1974, that certain steel products [1] are being

[1] The Commission made affirmative determinations with regard to certain carbon and alloy steel, including (1) slabs, (2) plate, (3) hot-rolled steel, (4) cold-rolled steel, (5) coated steel, (6) hot bar, (7) cold bar, (8) rebar, (9) welded tubular products other than OCTG, and (10) fittings; and stainless steel (11) bar and (12) rod.

The Commission was equally divided in its determination with regard to (1) carbon and alloy steel tin mill products, (2) tool steel, (3) stainless steel wire, and (4) stainless steel fittings. Pursuant to section 330(d)(1) of the Tariff Act of 1930, where the Commission is equally divided, the determination of either group of Commissioners may be considered by the President to be the determination of the Commission.

The Commission made negative determinations with regard to carbon and alloy steel (1) GOES, (2) ingots, (3) rails, (4) wire, (5) rope, (6) nails, (7) shapes, (8) fabricated structural units, (9) seamless tubular products other than OCTG, (10) seamless OCTG, and (11) welded OCTG; and stainless steel (12) slabs/ingots, (13) plate, (14) cloth, (15) rope, (16) seamless tubular products, and (17) welded tubular products.

Descriptions of the products covered by the investigation and their corresponding subheadings under the Harmonized Tariff Schedule (HTS) is presented in appendix A.

imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing articles like or directly competitive with the imported articles; and

(2) Finds pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act, that imports of carbon and alloy steel hot bar, cold bar, welded tubular products,[2] and fittings, and stainless steel bar and fittings from Canada account for a substantial share of the total imports and contribute importantly to the serious injury or threat thereof caused by imports.[3] With regard to imports from Mexico, the Commission finds that imports of certain carbon and alloy flat-rolled steel (slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel), carbon and alloy steel fittings, and stainless steel fittings from Mexico account for serious injury or threat thereof caused by imports.[4]

Recommendations With Respect to Remedy

The Commission[5] Recommends a Four-Year Program of Tariffs and Tariff-Rate Quotas

Plate, hot-rolled sheet, cold-rolled sheet, coated sheet, hot-rolled bar, cold-finished bar and stainless steel rod: An additional 20 percent *ad valorem* duty in the first year of relief, to be reduced to a 17 percent *ad valorem* duty in the second year of relief, 14 percent *ad valorem* duty in the third year of relief, and 11 percent *ad valorem* duty in the fourth year of relief;

Stainless steel bar: An additional 15 percent *ad valorem* duty in the first year of relief, to be reduced to a 12 percent *ad valorem* duty in the second year of relief, 9 percent *ad valorem* duty in the third year of relief, and 6 percent *ad valorem* duty in the fourth year of relief;

Carbon and alloy steel fittings and flanges:[6] An additional 13 percent *ad valorem* duty in the first year of relief, to be reduced to a 10 percent *ad valorem* duty in the second year of relief, 7 percent *ad valorem* duty in the third of relief, and 4 percent *ad valorem* duty in the fourth year of relief;

Rebar: An additional 10 percent *ad valorem* duty in the first year of relief, to be reduced to an 8 percent *ad valorem* duty in the second year of relief, 6 percent *ad valorem* duty in the third year of relief, and 4 percent *ad valorem* duty in the fourth year of relief;

Slabs:[6] A tariff-rate quota with an additional 20 percent *ad valorem* duty on imports in excess of 7.0 million short tons in the first year of relief, 17 percent *ad valorem* duty on imports in excess of 7.5 million short tons in the second year of relief; 14 percent *ad valorem* duty on imports in excess of 8.0 million short tons in the third year of relief; and 11 percent *ad valorem* duty on imports in excess of 8.5 million short tons in the fourth year of relief;

Welded tubular products other than OCTG:[6] A tariff-rate quota with an additional 20 percent *ad valorem* duty on imports in excess of year 2000 U.S. imports,[7] 17 percent *ad valorem* duty on imports in excess of the quantities noted in the second year, 14 percent *ad valorem* duty on imports in excess of the quantities noted for the third year, and 11 percent *ad valorem* duty in imports in excess of the quantities noted below.

The Commission further recommends that the additional tariffs or tariff-rate quotas on slabs, plate, hot-rolled, cold-rolled and coated products be applied to imports from Mexico but not imports from Canada; that the additional tariffs on cold-finished bar and stainless steel bar be applied to imports from Canada but not imports from Mexico; that the additional tariffs on rebar and stainless steel rod not apply to imports from either Canada or Mexico; that the additional tariffs on carbon and alloy fittings and flanges apply to imports from both Mexico[8] and Canada;[9] and that the additional tariffs on hot-rolled bar apply to imports from Canada but not imports from Mexico.[10] With respect to welded tubular products other than OCTG, the Commission recommends that the additional tariff-rate quota not be applied to imports from Mexico, and was evenly split regarding Canada.[11] The Commission further recommends that none of the additional tariffs or tariff-rate quotas apply to imports from Israel, or to any imports entered duty-free from beneficiary countries under the Caribbean Basin Economic Recover Act or the Andean Trade Preference Act.[12]

The Commission also recommends that the remedy on welded tubular products other than OCTG not apply to certain large diameter welded line pipe products.

The Commission also recommends that the President continue to pursue international negotiations with the governments of all the countries that supply these steel products aimed at reducing inefficient global overcapacity to produce these steel products.

The Commission further encourages the President to consider other appropriate action to facilitate the efforts of the domestic industry to rationalize and consolidate and thus make a positive adjustment to import competition.

The Commission's remedy recommendation and the individual remedy recommendations of the Commissioners are summarized in the tabulation at Appendix C.

Commissioner Bragg recommends the following:

(1) *A duty*, in addition to the current rate of duty, for a *four-year period* on imports of *carbon and alloy steel imports* and for a *three-year period* on

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A tabulation showing the individual votes of each Commissioner is presented in appendix B.

[2] The Commission was equally divided, 3–3, in its finding with regard to carbon and alloy steel welded tubular products other than OCTG from Canada.

[3] The Commission made a negative finding with regard to imports from Canada of certain carbon and alloy steel, including (1) slabs, (2) plate, (3) hot-rolled steel, (4) cold-rolled steel, (5) coated steel, (6) tin mill products, and (7) rebar; (8) tool steel; and stainless steel (9) rod and (10) wire.

[4] The Commission voted in the negative regarding imports from Mexico of carbon and alloy steel (1) tin-mill products, (2) hot bar, (3) cold bar, (4) rebar, and (5) welded tubular products other than OCTG; (6) tool steel; and stainless steel (7) bar, (8) rod, and (9) wire.

[5] Pursuant to section 330(d)(2) of the Tariff Act of 1930 (19 U.S.C. § 1330(d)(2)), the remedy recommendation of Chairman Koplan and Commissioners Miller and Hillman in this investigation is to be treated as the remedy finding of the Commission for purposes of section 203 of the Trade Act.

[6] Vice Chairman Okun joins in this recommended remedy for the first three years of relief only.

[7] Chairman Koplan and Commissioner Miller made affirmative determinations under Section 311 of the NAFTA with respect to imports of welded tubular products from both Canada and Mexico and therefore recommend that the additional tariffs apply to imports in excess of 2,600,000 short tons in the first year, 2,680,000 short tons in the second year, 2,760,000 short tons in the third year and 2,840,000 short tons in the fourth year.

Vice Chairman Okun and Commissioner Hillman made negative determinations under section 311 of the NAFTA with respect to imports of welded tubular products from Canada and Mexico and therefore recommend that the additional tariffs not apply to those countries and that the tariffs apply to imports in excess of 1,400,443 short tons in the first year, 1,442,456 short tons in the second year, 1,485,730 short tons in the third year, and (Commissioner Hillman only) 1,530,302 short tons in the fourth year.

[8] Chairman Koplan, Vice Chairman Okun and Commissioner Miller determined that the additional duties on fittings and flanges should apply to imports from Mexico.

[9] Vice Chairman Okun and Commissioners Miller and Hillman determined that the additional duties on fittings and flanges should apply to imports from Canada.

[10] Chairman Koplan and Commissioner Miller recommend that the additional duties apply to imports of hot-rolled bar from Mexico.

[11] Chairman Koplan and Commissioner Miller recommend that the additional tariff-rate quota apply to imports from Mexico.

[12] To the extent that the U.S.-Jordan Free Trade Area Implementation Act applies to this investigation, the Commission further recommends that none of the additional tariffs be applied to imports from Jordan.

imports of *stainless and tool steel* that are within the scope of this investigation, as follows:

Flat Products (including slabs, cut-to-length plate, hot-rolled sheet and strip, cold-rolled sheet and strip, corrosion resistant flat products, and tin mill products): 40 percent *ad valorem* in the first year of relief; 38 percent *ad valorem* in the second year of relief; 36 percent *ad valorem* in the third year of relief; and 31 percent *ad valorem* in the fourth year of relief.

Long Mill Products (including hot bar, cold bar, and rebar): 35 percent *ad valorem* in the first year of relief; 33 percent *ad valorem* in the second year of relief; 31 percent *ad valorem* in the third year of relief; and 26 percent *ad valorem* in the fourth year of relief.

Tubular Products (including welded tubular other than OCTG, and fittings, flanges, and tool joints): 30 percent *ad valorem* in the first year of relief; 28 percent *ad valorem* in the second year of relief; 26 percent *ad valorem* in the third year of relief; and 21 percent *ad valorem* in the fourth year of relief.

Stainless and Tool Steel Flat and Long Products (including stainless bar, stainless rod, and tool steel): 25 percent *ad valorem* in the first year of relief; 20 percent *ad valorem* in the second year of relief; and 15 percent *ad valorem* in the third year of relief.

Stainless Wire: 15 percent *ad valorem* in the first year of relief; 10 percent *ad valorem* in the second year of relief; and 5 percent *ad valorem* in the third year of relief.

Stainless Fittings and Flanges: 30 percent *ad valorem* in the first year of relief; 25 percent *ad valorem* in the second year of relief; and 20 percent *ad valorem* in the third year of relief.

(2) Based on her negative injury findings under section 311(a) of the NAFTA Implementation Act, with respect to imports from Canada of carbon and alloy flat products, carbon and alloy long products, stainless flat and long products, and stainless wire products, as well as imports from Mexico of carbon and alloy long products, carbon and alloy welded tubular other than OCTG, stainless and tool steel flat and long products, and stainless wire, Commissioner Bragg recommends that such imports not be subject to the increased duties.

(3) Based on her affirmative injury findings under section 311(a) of the NAFTA Implementation Act, with respect to imports from Canada of carbon and alloy welded tubular other than OCTG, carbon and alloy fittings, flanges, and tool joints, and stainless fittings and flanges, as well as imports from Mexico of carbon and alloy flat products, carbon and alloy fittings, flanges, and tool joints, and stainless fittings and flanges, Commissioner Bragg recommends that such imports be subject to the increased duties.

(4) Commissioner Bragg also recommends that the increased duties not apply to imports of covered steel entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, the U.S.-Israel Free Trade Agreement Act, or the U.S.-Jordan Free Trade Area Implementation Act.

(5) In the consideration of administrative efficiency and past Commission experience, these remedy recommendations do not address the issue of specific product exclusions. Nonetheless, Commissioner Bragg recommends that the President review the record regarding the issues presented by the interested parties to the U.S. Trade Representatives' Trade Policy Staff Committee.[13] Her remedy recommendation for tariffs applies across a broad category of products; tariffs, unlike quotas and tariff-rate quotas, do not operate to exclude products or to encourage circumvention or product shifting.

(6) Commissioner Bragg also indicates her support for the President's pursuit of international negotiations to address the underlying causes of the increase in imports, such as global overcapacity and production, as well as implement any other action authorized under law that is likely to facilitate positive adjustment to import competition, including Trade Adjustment Assistance to aid the numerous dislocated workers of the U.S. steel industries.

Vice Chairman Okun Recommends a Three-Year Program of Quotas, Tariff-Rate Quotas, and Tariffs

Plate, hot-rolled sheet, cold-rolled sheet, coated sheet, hot-rolled bar, cold-finished bar, rebar, stainless steel bar, and stainless steel rod: Quantitative restrictions on imports of the following categories, in the following amounts in the first year, to be increased by three percent in each subsequent year that the action is in effect: Plate—1,232,260 short tons, hot-rolled sheet—4,928,712 short tons, cold-rolled sheet—2,796,196 short tons, and coated sheet—1,683,282 short tons, hot-rolled bar—1,961,648 short tons, cold-finished bar—246,033 short tons, rebar—1,054,266 short tons, stainless steel bar—109,440 short tons, and stainless steel rod—62,573 short tons;

Slab:[14] A tariff-rate quota with an additional 20 percent *ad valorem* tariff on imports in excess of 7.0 million short tons in the first year of relief, an additional 17 percent *ad valorem* tariff on imports in excess of 7.5 million short tons in the second year of relief; and an additional 14 percent *ad valorem* tariff on imports in excess of 8.0 million short tons in the third year of relief;

Welded tubular products other than OCTG:[14] A tariff-rate quota with an additional 20 percent *ad valorem* tariff on imports in excess of 1,400,443 short tons in the first year of relief, an additional 17 percent *ad valorem* tariff on imports in excess of 1,442,456 shot tons in the second year, and an additional 14 percent *ad valorem* tariff on imports in excess of 1,485,730 short tons in the third year of relief;

Carbon and alloy steel fittings and flanges:[14] An additional 13 percent *ad valorem* tariff in the first year of relief, to be reduced to an additional 10 percent *ad valorem* tariff in the second year of relief, and to be reduced to an additional 7 percent *ad valorem* tariff in the third year of relief.

Vice Chairman Okun recommends that the quotas or tariff-rate quotas on slab, plate, hot-rolled sheet, cold-rolled sheet and coated sheet products be applied to imports from Mexico but not imports from Canada; that the quotas on hot-rolled bar, cold-finished bar and stainless steel bar be applied to imports from Canada but not imports from Mexico; that the quotas on rebar, welded tubular products and stainless steel rod not apply to imports from either Canada or Mexico; that the additional tariffs on carbon and alloy fittings and flanges apply to imports from both Canada and Mexico. Vice Chairman Okun further recommends that none of the import restrictions applies to imports from Israel, or to any imports entered duty-free from beneficiary countries under the Caribbean Basin Economic Recover Act or the Andean Trade Preference Act.[15]

Vice Chairman Okun does not recommend that these remedies apply in their entirety to certain large diameter welded line pipe, nor to tool joints

[13] Although I have reviewed each of the numerous exclusion requests for specialty products, I make no recommendation on this issue. I note that the Office of the U.S. Trade Representative has established a mechanism to consider product exclusion requests. 66 FR 208, at 54,321–24 (Oct. 26, 2001).

[14] Vice Chairman Okun joins the Commission's recommended remedy for the first three years of relief only.

[15] To the extent that the U.S.-Jordan Free Trade Area Implementation Act applies to this investigation, Vice Chairman Okun further recommends that none of the import restrictions applies to imports from Jordan.

included within the fittings and flanges category.

Vice Chairman Okun also recommends that the President administer quotas and tariff-rate quotas on a quarterly basis, with country-specific allocations, and a short-supply mechanism, with the exception of welded tubular products (recommending that the President administer the remedy globally, on an annual basis, with a partial product exclusion).

Vice Chairman Okun also recommends that the President continue to pursue international negotiations with the governments of all the countries that supply these steel products aimed at reducing global inefficient or excess capacity to produce these steel products.

Vice Chairman Okun also recommends that the President utilize all trade adjustment assistance programs.

Vice Chairman Okun further urges the President to consider solutions to address legacy costs and other impediments to the rationalization and consolidation of the domestic industries producing steel.

Commissioner Devaney recommends:

As to Carbon and Alloy Flat Products:

(1) I recommend that the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of flat products that are the subject of the remedy phase of this investigation as follows: 40 percent *ad valorem* in the first year of relief; 38 percent *ad valorem* in the second year of relief; 36 percent *ad valorem* in the third year of relief and 31 percent *ad valorem* in the fourth year of relief;

(2) Having made negative findings with respect to imports of flat products from both Mexico and Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended increase in the duty;

(3) I recommend that the increase in duty described above apply to imports of flat products from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of flat products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

As to Carbon and Alloy Long Products:

(1) I recommend that the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of carbon bar and rebar as follows: 35 percent *ad valorem* in the first year of relief; 33 percent *ad valorem* in the second year of relief; 31 percent *ad valorem* in the third year of relief and 26 percent *ad valorem* in the fourth year of relief;

(2) Having made negative findings with respect to imports of carbon bar and rebar from both Mexico and Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended increase in the duty;

(3) I recommend that the increase in duty described above apply to imports of carbon bar and rebar from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of long products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

As to Carbon and Alloy Tubular Products: (1) I recommend that the President impose a duty, in addition to the current rate of duty, for a four year period, on all imports of tubular products that are the subject of the remedy phase of this investigation as follows: 30 percent *ad valorem* in the first year of relief, 28 percent *ad valorem* in the second year of relief, 26 percent *ad valorem* in the third year of relief, and 21 percent *ad valorem* in the fourth year of relief;

(2) Having made negative findings with respect to imports of tubular products from both Mexico and Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended increase in the duty;

(3) I recommend that the increase in duty described above apply to imports of tubular products from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of tubular products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

As to Stainless Steel Products except Fittings and Flanges:

(1) I recommend that the President impose quotas in the amount equal to the respective average quantities during the period 1996 to 1998, which I find to be the most recent representative period, on imports of stainless steel bar, stainless steel rod, tool steel, and stainless steel wire for a three year period. In addition, I recommend that during the first year of the quotas, a 15 percent *ad valorem* duty be placed on these products. I recommend that the quota be administered on a quarterly and country-by-country basis;

(2) Having made a negative finding with respect to these products from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended quotas and duty increases;

(3) I recommend that this quota and duty increase apply to stainless bar imports from beneficiary countries under the Carribean Basin Recovery Act, but not apply to imports entered from beneficiary countries under the Andean Trade Preference Act, imports from Jordan, or imports from Israel. These quotas and duty increases should not apply to imports of stainless steel rod, tool steel or stainless steel wire from Israel, Jordan, beneficiary countries under the Carribean Basin Recovery Act, or beneficiary countries under the Andean Trade Preference Act.

As to Stainless Steel Fittings and Flanges: (1) I recommend that the President impose a quota in the amount equal to the average quantity during the period 1996 to 1998, which I find to be the most recent representative period, on imports of stainless steel fittings and flanges for a four year period. I recommend that the quota be administered on a quarterly and country-by-country basis;

(2) Should the President determine that the Commission reached an affirmative determination with respect to stainless steel fittings and flanges from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports be subject to the quota recommended.

(3) I recommend that this quota not apply to imports from Israel, Jordan, beneficiary countries under the Caribbean Basin Recovery Act, or beneficiary countries under the Andean Trade Preference Act.

Further, the Commission has taken large amounts of evidence on exclusion requests over the course of this investigation, and the United States Trade Representative has gathered information regarding such requests. I therefore believe it helpful to the President and USTR to make a recommendation regarding these requests. I have determined that several specialty or niche products should be excluded from the remedy recommended for the product category to which they belong.

Background

Following receipt of a request from the United States Trade Representative on June 22, 2001, the Commission instituted investigation No. TA–201–73, Steel, under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) to determine whether certain steel

products [16] are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.[17]

Notice of the institution of the Commission's investigation was given by posting a copy of the notice on the Commission's web site (www.usitc.gov), and by publishing the notice in the **Federal Register** of July 3, 2001 (66 FR 35267). The public hearings in connection with the injury phase of the investigations were held between September 17, 2001 and October 5, 2001 in Washington, DC and Merrillville, IN. The public hearings in connection with the remedy phase of the investigations were held between November 6, 2001 and November 9, 2001 in Washington, DC.

Issued: December 20, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

Appendix A

Carbon and Alloy Steel Flat Products

Slabs

A slab is a semifinished steel product produced by continuous casting or by hot-rolling or forging. Slabs of carbon steel have a rectangular cross-section with a width at least two times the thickness. Slabs of other alloy steel have a width at least four times the thickness. Carbon and alloy steel slabs are provided for in the following HTS subheadings: 7207.12.0010, 7207.12.0050, 7207.20.0025, 7207.20.0045, and 7224.90.0055.

Plate

This category includes both cut-to-length (''CTL'') plate and clad plate. CTL plate is a flat-rolled product of rectangular cross-section, having a thickness of 4.75 mm or more and a width which exceeds 150 mm and measures at least twice the thickness. It is flat, i.e., not in coil,[1] and may be of any shape (rectangular, circular, or other). It may have patterns-in-relief derived directly from rolling (floor plate). It may be perforated, corrugated, or polished. Plate may also have been subjected to heat-treatment and may have been descaled or pickled. Clad plate is a flat-rolled product of more than one metal layer, of which the predominating metal is non-alloy steel, and the layers are joined by molecular interpenetration of the surfaces in contact. The metal other than non-alloy steel used for clad plate may be stainless steel, titanium, or any other metal. The clad plate may be in the form of a flat plate or a coiled plate, may be of any thickness, and may be either hot- or cold-rolled. Products in this category are provided for in the following HTS subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.90.0000, 7210.90.1000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.3005, 7225.40.3050, 7225.50.6000, and 7226.91.5000.

Hot-Rolled Steel

Products in this category are hot-rolled sheet and strip, as well as plate in coils. These are carbon and alloy steel flat-rolled products of rectangular cross-section, produced by hot-rolling on hot-strip (continuous) mills, reversing mills, or Steckel mills. If the product is in coils, it may be of any thickness. If it is in straight lengths, it must be of a thickness of less than 4.75 mm and a width measuring at least 10 times the thickness. It may have patterns-in-relief derived directly from rolling (floor plate). It may be perforated, corrugated, or polished. It may be either unpickled or pickled. It may have been subjected to various processing steps after hot reduction, including pickling or descaling, rewinding, flattening, temper rolling, or heat treatment, and it may have been cut into shapes other than rectangular. Products in this category are provided for in the following HTS subheadings: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.30.3005, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7226.91.7000, and 7226.91.8000.

Cold-Rolled Steel

Products in this category include cold-rolled sheet and strip other than GOES. These are carbon and alloy steel flat-rolled products of rectangular cross-section, produced by cold-rolling. If the product is in coils, it may be of any thickness. If it is in straight lengths, it must be of a thickness of less than 4.75 mm and a width measuring at least 10 times the thickness. The product may have patterns-in-relief derived directly from rolling. It may be perforated, corrugated, or polished. It may have been subjected to various processing steps after cold reduction, including flattening, temper rolling, or heat treatment, and it may have been cut into shapes other than rectangular. Products in this category are provided for in the following HTS subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7225.19.0000, 7225.50.7000, 7225.50.8010, 7225.50.8015, 7225.50.8085, 7226.92.7050, 7226.92.8005, 7226.92.8050, 7226.19.1000, 7226.19.9000, 7226.92.5000, and 7226.92.7005.

GOES

Grain-oriented electrical steel (''GOES'') includes low-carbon, silicon-iron alloys with a silicon content of approximately 3.2 percent, in which low core loss and high permeability in the direction of rolling have been achieved by appropriate metallurgical processing. It is a flat-rolled cold-rolled steel product sold in sheet or strip form and has a grain structure that permits it to conduct a magnetic field with a high degree of efficiency. Products in this category are provided for in the following HTS subheadings: 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060.

Coated Steel

Products in this category include corrosion-resistant and other coated sheet and strip. These products are flat-rolled products of carbon or alloy steel with a metallic or nonmetallic coating, other than tin mill products, and other than clad. The category includes steel that is galvanized (i.e., coated with zinc), aluminized, coated with zinc-aluminum alloy, galvannealed (heat-treated after coating), coated with a mixture of lead and tin (i.e., terne plate and terne coated sheets), painted, and coated with plastic. Products in this category are provided for in the following HTS subheadings: 7210.20.0000, 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.3000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7225.91.0000, 7225.92.0000, 7225.99.0010, 7225.99.0090, 7226.93.0000, 7226.94.0000, and 7226.99.0000.

Tin Mill Products

Tin mill products are flat-rolled products of carbon or alloy steel, plated or coated with tin or with chromium oxides or with chromium and chromium oxides (tin-free steel). The products may be either in coils or in straight lengths. Tin products are made by electrolytically coating flat-rolled steel with tin or chromium. Products in this category are provided for in the following HTS subheadings: 7210.11.0000, 7210.12.0000, 7210.50.0000, and 7212.10.0000.

Carbon and Alloy Steel Long Products

Ingots

This category includes ingots, blooms, and billets. Ingots are the primary form into which molten steel is cast when produced by other than continuous casting. Blooms and billets are semifinished products of rectangular cross-section with a width less

[16] The June 22, 2001, request letter from the United States Trade Representative and the accompanying annexes listing the covered products by HTS categories are on the Commission's web site (http://www.usitc.gov).

[17] On July 26, 2001, the Commission received a resolution from the Committee on Finance of the United States Senate for an investigation of the same scope. Pursuant to section 603 of the Trade Act, the Commission consolidated the investigation requested by the Committee with the ongoing investigation.

[1] Plate in coil, which is not included in this category, is included in the hot-rolled category.

than two times the thickness if of carbon steel, or less than four times the thickness if of other alloy steel. This category includes other products of solid section, which have not been further worked than subjected to primary hot-rolling or roughly shaped by forging, including tube rounds and blanks for angles, shapes, or sections. Ingots are provided for in the following HTS subheadings: 7206.10.0000, 7206.90.0000, 7207.11.0000, 7207.19.0030, 7207.19.0090, 7207.20.0075, 7207.20.0090, 7224.10.0005, 7224.10.0075, 7224.90.0005, 7224.90.0045, 7224.90.0065, and 7224.90.0075.

Hot Bar

Carbon and alloy hot-rolled bar and light shapes (''hot bar'') are products which have a solid cross-section in the shape of circles, segments of circles, ovals, triangles, rectangles (including squares), or other convex polygons including flattened circles and modified rectangles of which two opposite sides are convex arcs and the other two sides are straight, of equal length, and parallel. This category includes the following: Bars of a diameter of 19 mm or more in irregularly wound coils; free-machining carbon steel and high-nickel alloy steel bars and rods of any diameter; angles, shapes, and sections (such as U, I, or H sections) not further worked than hot-rolled, hot-drawn, or extruded, of a height of less than 80 mm; and hollow drill bars and rods of which the greatest external dimension of the cross-section exceeds 15 mm but does not exceed 52 mm, and of which the greatest internal dimension does not exceed one half of the greatest external dimension. This category excludes carbon and alloy (including free-machining alloy steel) wire rod having a diameter of 5 mm or more but less than 19 mm (which are covered by a section 201 relief on wire rod) and hollow bars and rods of iron or steel not conforming to this definition (which are included in the pipe and tubing product categories). Hot bars are provided for in the following HTS subheadings: 7213.20.0000, 7213.99.0060, 7213.99.0090, 7214.10.0000, 7214.30.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0015, 7214.99.0030, 7214.99.0045, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.1000, 7215.90.5000, 7216.10.0010, 7216.10.0050, 7216.21.0000, 7216.22.0000, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7227.20.0000, 7227.20.0010, 7227.20.0090, 7227.90.1030, 7227.90.2030, 7227.90.6005, 7227.90.6058, 7228.20.1000, 7228.30.2000, 7228.30.8005, 7228.30.8050, 7228.40.0000, 7228.60.1030, 7228.60.6000, 7228.70.3020, 7228.70.3040, 7228.70.3060, 7228.70.3080, 7228.70.6000, and 7228.80.0000.

Cold Bar

Carbon and alloy cold-finished bar (''cold bar'') are products defined by shape in the hot bar category, not in coils, which have been subjected to a cold-finishing operation such as cold-rolling, cold-drawing, grinding, or polishing. Cold bars are provided for in the following HTS subheadings: 7215.10.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.3000, 7228.20.5000, 7228.50.1010, 7228.50.5005, 7228.50.5050, and 7228.60.8000.

Rebar

Carbon and alloy rebar are hot-rolled steel products which have a solid cross-section (as described for hot bars) and contain indentations, ribs, grooves, or other deformations produced during the rolling process or by twisting after rolling, for the purpose of improving the bond with concrete. Rebar is provided for in HTS subheadings 7213.10.0000 and 7214.20.0000.

Rails

Carbon and alloy rails and railway products are railway and track construction material including rails, check-rails and rack-rails, sleepers (cross-ties), fish-plates, and sole-plates (base plates). The bulk of the products in this category are produced in dedicated facilities. Rails are provided for in the following HTS subheadings: 7302.10.1010, 7302.10.1015, 7302.10.1025, 7302.10.1035, 7302.10.1045, 7302.10.5020, 7302.10.1055, 7302.20.0000, and 7302.40.0000.

Wire

Carbon and alloy wire are cold-formed products in coils, of any uniform solid cross-section along their entire length, which do not conform to the definition of flat-rolled products. Wire is provided for in the following HTS subheadings: 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.4030, 7217.10.4090, 7217.10.5030, 7217.10.5090, 7217.10.6000, 7217.10.7000, 7217.10.8010, 7217.10.8020, 7217.10.8025, 7217.10.8030, 7217.10.8045, 7217.10.8060, 7217.10.8075, 7217.10.8090, 7217.10.9000, 7217.20.1500, 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, 7217.20.4580, 7217.20.6000, 7217.20.7500, 7217.30.1530, 7217.30.1560, 7217.30.3000, 7217.30.4510, 7217.30.4520, 7217.30.4530, 7217.30.4540, 7217.30.4550, 7217.30.4560, 7217.30.4590, 7217.30.6000, 7217.30.7500, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7229.20.0000, 7229.90.1000, 7229.90.5015, 7229.90.5030, 7229.90.5050, and 7229.90.9000.

Rope

Carbon and alloy strand, rope, cable, and cordage (''rope'') are stranded wire (two or more wires twisted closely together), ropes, and cables, not electrically insulated. Rope is provided for in the following HTS subheadings: 7312.10.3005, 7312.10.3010, 7312.10.3012, 7312.10.3020, 7312.10.3045, 7312.10.3065, 7312.10.3070, 7312.10.3074, 7312.10.3080, 7312.10.8000, 7312.10.9030, 7312.10.9060, and 7312.10.9090.

Nails

Carbon and alloy nails, staples, and woven cloth (''nails'') are woven cloth of carbon or alloy steel wire and nails, tacks, drawing pins, corrugated nails, staples, and similar articles of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper. Nails are provided for in the following HTS subheadings: 7314.19.0000, 7317.00.5504, 7317.00.5506, 7317.00.5510, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, 7317.00.7500, and 8305.20.0000.

Shapes

Carbon and alloy heavy structural shapes and sheet piling (''shapes'') are angles, shapes, and sections (such as U, I, or H sections) of a height equal to or more than 80 mm. The markets for shapes include distributors, fabricators, and end users. Shapes are provided for in the following HTS subheadings: 7216.31.0000, 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.40.0010, 7216.40.0050, 7301.10.0000, 7301.20.1000, and 7301.20.5000.

Fabricated Structural Units

Carbon and alloy fabricated structural units are structures (excluding prefabricated buildings) and parts of structures (i.e., bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, pillars, and columns) made from iron or steel plates, rods, angles, shapes, sections, tubes, and the like. This category includes sheet-metal roofing, siding, flooring, and roofing drainage equipment and excludes doors, windows, their frames and thresholds, and architectural and ornamental work. Fabricated products are provided for in the following HTS subheadings: 7308.10.0000, 7308.20.0000, 7308.40.0000, 7308.90.3000, 7308.90.6000, 7308.90.7000, 7308.90.9530, and 7308.90.9590.

Carbon and Alloy Steel Tubular Products

Seamless Tubular Products Other Than OCTG

Carbon and alloy seamless tubular products are tubular products that have no joint, whether welded or not, along the longitudinal axis of the product. OCTG and cast iron pipe, tube, hollow profiles, hollow drill bars, fittings, flexible tubing, and insulated electrical conduit tubing are excluded from this category. Seamless tubular products are provided for in the following HTS subheadings: 7304.10.1020, 7304.10.1030, 7304.10.1045, 7304.10.1060, 7304.10.1080, 7304.10.5020, 7304.10.5050, 7304.10.5080, 7304.31.3000, 7304.31.6010, 7304.31.6050, 7304.39.0002, 7304.39.0004, 7304.39.0006, 7304.39.0008, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.51.1000, 7304.51.5005, 7304.51.5015, 7304.51.5045, 7304.51.5060, 7304.59.1000, 7304.59.2030, 7304.59.2040, 7304.59.2045, 7304.59.2055, 7304.59.2060, 7304.59.2070, 7304.59.2080, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, 7304.59.8080, 7304.90.1000, 7304.90.3000, 7304.90.5000, and 7304.90.7000.

Seamless OCTG

Carbon and alloy seamless oil country tubular goods (''seamless OCTG'') are produced by the seamless processes described above but are used below ground in the drilling and completion of oil or gas

wells. Seamless OCTG consist of casing, which is the structural retainer for the walls of oil and gas wells; tubing, which is used within casing to convey oil or gas to ground level; and drill pipe, which is used to convey power to a rotary drilling tool below ground level. Seamless OCTG are provided for in the following HTS subheadings: 7304.21.3000, 7304.21.6030, 7304.21.6045, 7304.21.6060, 7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3010, 7304.29.3020, 7304.29.3030, 7304.29.3040, 7304.29.3050, 7304.29.3060, 7304.29.3080, 7304.29.4010, 7304.29.4020, 7304.29.4030, 7304.29.4040, 7304.29.4050, 7304.29.4060, 7304.29.4080, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6015, 7304.29.6030, 7304.29.6045, 7304.29.6060, 7304.29.6075, and 8431.43.8040.

Welded Tubular Products Other Than OCTG

Carbon and alloy welded tubular products are produced by bending flat-rolled steel products to form a hollow product with overlapping or abutting seams. These products are then fastened along the seam by welding, although clipping, riveting, and forging are also used to fasten a seam. The seam produced by the fastening method may run either longitudinally or spirally along the length of the product. The welded tubular goods covered in this category do not include OCTG and carbon quality steel welded line pipe of an outside diameter that does not exceed 406.7 mm (the latter product is covered by a prior section 201 relief request on line pipe (see Circular Welded Carbon Quality Line Pipe, Inv. No. TA–201–70, publication No. 3261, December 1999). Welded tubular products are provided for in the following HTS subheadings: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.2000, 7305.31.4000, 7305.31.6000, 7305.39.1000, 7305.39.5000, 7305.90.1000, 7305.90.5000, 7306.30.1000, 7306.30.3000, 7306.30.5010, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5035, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.3000, 7306.50.5010, 7306.50.5030, 7306.50.5050, 7306.50.5070, 7306.60.1000, 7306.60.3000, 7306.60.5000, 7306.60.7060, 7306.90.1000, and 7306.90.5000.

Welded OCTG

Carbon and alloy welded oil country tubular goods (''welded OCTG'') are produced by forming a flat-rolled product into a tubular shape and then welding the seam. Welded OCTG are used below ground in the drilling and completion of oil or gas wells, and consist of casing, which is the structural retainer for the walls of oil and gas wells, and tubing, which is used within the casing to convey oil or gas to ground level. Welded OCTG do not include drill pipe. Welded OCTG are provided for in the following HTS subheadings: 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.20.1030, 7306.20.1090, 7306.20.2000, 7306.20.3000, 7306.20.4000, 7306.20.6010, 7306.20.6050, 7306.20.8010, and 7306.20.8050.

Fittings

Carbon and alloy fittings and flanges (''fittings'') are generally used for connecting the bores of two or more pipes or tubes together, or for connecting a pipe or tube to some other apparatus, or for closing the tube aperture. This category also includes tool joints for welding onto lengths of unfinished drill pipe to produce finished drill pipe. Fittings do not include valves or articles used for installing pipes and tubes but which do not form an integral part of the bore, e.g., hangers, stays, and similar supports, clamping or tightening bands, or collars used for clamping flexible tubing or hose to rigid piping, taps, connecting pieces, etc. Fittings are provided for in the following HTS subheadings: 7307.91.5010, 7307.91.5030, 7307.91.5050, 7307.91.5070, 7307.92.3010, 7307.92.3030, 7307.92.9000, 7307.93.3000, 7307.93.6000, 7307.93.9030, 7307.93.9060, 7307.99.5015, 7307.99.5045, 7307.99.5060, and 8431.43.8020.

Stainless and Tool Steel Products

Slabs/Ingots

Slabs, blooms, billets, and ingots (''slabs/ingots'') are the most common forms of semi-finished stainless steel. Following the production of molten steel with the desired properties, the stainless steel is cast into a form that can enter the rolling process. This category includes other products of solid section that have not been further worked than primary hot-rolling or roughly shaped by forging, including tube rounds. Slabs/ingots are provided for in the following HTS subheadings: 7218.10.0000, 7218.91.0015, 7218.91.0030, 7218.91.0060, 7218.99.0015, 7218.99.0030, 7218.99.0045, 7218.99.0060, and 7218.99.0090.

Plate

The production of stainless steel CTL plate is commonly achieved by the uncoiling of flat-rolled stainless steel and cutting it to a desired length. It may be of any shape (rectangular, circular, or other) and be produced by rolling on a sheared-plate mill or by flattening and cutting to length from a coiled plate. It may be perforated, corrugated, or polished; subjected to heat-treatment; and descaled or pickled. Plate in coil form is included if under 600 mm in width and 4.75 mm or more in thickness. Plate is provided for in the following HTS subheadings: 7219.21.0005, 7219.21.0020, 7219.21.0040, 7219.21.0060, 7219.22.0005, 7219.22.0015, 7219.22.0020, 7219.22.0025, 7219.22.0035, 7219.22.0040, 7219.22.0045, 7219.22.0070, 7219.22.0075, 7219.22.0080, 7219.31.0050, and 7220.11.0000.

Bar

Stainless steel bars are articles of stainless steel in straight lengths having a uniform solid cross-section in the shape of circles, segments of circles, ovals, rectangles, squares, triangles, or other convex polygons. Also included are angles, shapes, and sections (such as U, I, or H sections) not further worked than hot-rolled, hot-drawn, or extruded and concrete rebar, which has indentations, ribs, grooves, or other deformations produced during the rolling process. Bar is provided for in the following HTS subheadings: 7221.00.0045, 7222.11.0005, 7222.11.0050, 7222.19.0005, 7222.19.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, 7222.30.0000, 7222.40.3025, 7222.40.3045, 7222.40.3065, 7222.40.3085, and 7222.40.6000.

Rod

Stainless steel rod is an intermediate stainless steel product that is produced in a wide variety of sizes and grades with a solid cross-section. Rod covered by this investigation includes rod of circular cross-section having a diameter of less than 19 mm and if containing alloy then containing 24 percent or more of nickel, by weight, or of a shape other than circular, may be of any size. Rod is provided for in the following HTS subheadings: 7221.00.00.05, 7221.00.00.15, 7221.00.00.30, and 7221.00.00.75.

Tool Steel

Tool steel includes tool steel in all product forms. Tool steel is provided for in the following HTS subheadings: 7224.10.0045, 7224.90.0015, 7224.90.0025, 7224.90.0035, 7225.20.0000, 7225.30.1000, 7225.30.5060, 7225.40.1090, 7225.40.5060, 7225.50.1060, 7226.20.0000, 7226.91.0500, 7226.91.1560, 7226.91.2560, 7226.92.1060, 7226.92.3060, 7227.10.0000, 7227.90.1060, 7227.90.2060, 7228.10.0010, 7228.10.0030, 7228.10.0060, 7228.30.4000, 7228.30.6000, 7228.50.1020, 7228.50.1040, 7228.50.1060, 7228.50.1080, 7228.60.1060, and 7229.10.0000.

Wire

Stainless steel wire is a cold-formed product in coils, of any uniform solid cross-section along its whole length, which does not conform to the definition of flat-rolled products. Wire is provided for in the following HTS subheadings: 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, 7223.00.1075, 7223.00.5000, and 7223.00.9000.

Cloth

Woven cloth of stainless steel wire is an article of stainless steel in which wire is interwoven to produce a fabric. Cloth is provided for in the following HTS subheadings: 7314.14.1000, 7314.14.2000, 7314.14.3000, 7314.14.6000, and 7314.14.9000.

Rope

Stainless steel rope includes stranded wire (two or more wires twisted closely together), ropes, cables, and cordage which are not electrically insulated. Wire strand is two or more wires twisted together precisely around a center so that all the wires in the strand can move in unison in order to equally distribute load and bending stresses. Rope is provided for in the following HTS subheadings: 7312.10.1030, 7312.10.1050, 7312.10.1070, 7312.10.6030, and 7312.10.6060.

Seamless Tubular Products

Stainless steel seamless tubular products have no joint, whether welded or not, along

the longitudinal axis of the product and may be formed by several methods, including hot-rolling, hot-extrusion, deep drawing of a disc, forging, and casting. Seamless tubular products are provided for in the following HTS subheadings: 7304.41.3005, 7304.41.3015, 7304.41.3045, 7304.41.6005, 7304.41.6015, 7304.41.6045, 7304.49.0005, 7304.49.0015, 7304.49.0045, and 7304.49.0060.

Welded Tubular Products

Stainless steel welded tubular products are produced by bending flat-rolled steel products to form a hollow product with overlapping or abutting seams. The seam is then generally fastened together by welding, although clipping, riveting, and forging are also used to fasten a seam. The seam may run either longitudinally or spirally along the length of the product. Welded tubular products are provided for in the following HTS subheadings: 7306.40.1010, 7306.40.1015, 7306.40.1090, 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5042, 7306.40.5044, 7306.40.5062, 7306.40.5064, 7306.40.5080, 7306.40.5085, 7306.40.5090, and 7306.60.7030.

Fittings

Stainless steel flanges and fittings are generally used for connecting the bores of two or more pipes or tubes together, or for connecting a pipe or tube to some other apparatus, or for closing the tube aperture. This category does not include valves or articles used for installing pipes and tubes but which do not form an integral part of the bore, e.g., hangers, stays, and similar supports, clamping or tightening bands, or collars (hose clips) used for clamping flexible tubing or hose to rigid piping, taps, connecting pieces, etc. Fittings are provided for in the following HTS subheadings: 7307.21.1000, 7307.21.5000, 7307.22.1000, 7307.22.5000, 7307.23.0000, 7307.29.0030, and 7307.29.0090.

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Appendix B

Commissioner		Carbon & Alloy Flat Products							Carbon & Alloy Long Products														Carbon & Alloy Tubular Products					Stainless & Tool Steel Products											
		Slabs	Plate	Hot-rolled	Cold-rolled	GOES	Coated	Tin	Ingots	Hot bar	Cold bar	Rebar	Rails	Wire	Rope	Nails	Shapes	Fabricated units	Seamless	Seamless OCTG	Welded	Welded OCTG	Fittings	Slabs/ingots	Plate	Bar	Rod	Tool steel	Wire	Cloth	Rope	Seamless pipe	Welded pipe	Fittings
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33
Koplan		A	A	A	A	N	A	N	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	A	A	A	N	A	N	N	A
	Canada	N	N	N	N		N			A	A	N									A		N			A	N	N	N		N			N
	Mexico	A	A	A	A		A			A	N	N									A					N	N	N	N		N			N
Okun		A	A	A	A	N	A	N	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	N	N	N	N	N	N	N	N
	Canada	N	N	N	N		N			A	A	N									N					N								
	Mexico	A	A	A	A		A			N	N	N									N					N								
Bragg		A	A	A	A	N	A	A	A	A	A	A	A	A	A	A	A	N	A	A	A	A	A	A	A	A	N	A	A	A	A	N	N	A
	Canada	N	N	N	N	N	N	N	N	N	N	N	N	A	A	A	N		N	N	A	A	A	N	N	N	N	N	N	A	N	A		A
	Mexico	A	A	A	A	A	A	A	N	N	N	N	N	A	A	A	N		N	N	N	A	A	N	N	N	N	N	N	N	N	A		A
Miller		A	A	A	A	N	A	A	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	N	N	N	N	N	N	N	N
	Canada	N	N	N	N		N	A		A	A	N									A		A			A	N							
	Mexico	A	A	A	A		A	N		A	N	N									A		A			N	N							

Continued on next page

Commissioner	Carbon & Alloy Flat Products							Carbon & Alloy Long Products												Carbon & Alloy Tubular Products						Stainless & Tool Steel Products									
	Slabs	Plate	Hot-rolled	Cold-rolled	GOES	Coated	Tin	Ingots	Hot bar	Cold bar	Rebar	Rails	Wire	Rope	Nails	Shapes	Fabricated units	Seamless	Seamless OCTG	Welded	Welded OCTG	Fittings	Slabs/ingots	Plate	Bar	Rod	Tool steel	Wire	Cloth	Rope	Seamless pipe	Welded pipe	Fittings
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33
Hillman	A	A	A	A	N	A	N	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	A	N	N	N	N	N	N	N
Canada	N	N	N	N		N			A	A	N									N		A			A	N							
Mexico	A	A	A	A		A			N		N									N		N			N	N							
Devaney	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	N	A	A	A	A	A	A	A	A	A	A	A	N	A	N	A	A
Canada	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		N	N	N	N	N	N	N	N	N	N	N	N	N			A
Mexico	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		N	N	N	N	N	N	N	N	N	N	N		N			A
Commission	A	A	A	A	N	A	T I E	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	A	T I E	T I E	N	N	N	T I E	T I E
Canada	N	N	N	N		N	N		A	A	N									T I E		A			A	N	N	N					A
Mexico	A	A	A	A		A	N		N	N	N									N		A			N	N	N	N					A

Note:–With regard to welded tubular products other than OCTG, Chairman Koplan, Vice Chairman Okun, Commissioner Miller, and Commissioner Hillman made an affirmative determination based on threat of serious injury. With regard to carbon and alloy wire, rope, and nails and stainless wire and rope, Commissioner Bragg made affirmative determinations based on threat of serious injury.

Appendix C

Product	Commissioner/Remedy Recommendation		Year 1	Year 2	Year 3	Year 4	Special Findings[1]
Carbon and alloy steel slabs	Koplan, Okun, Miller, Hillman[2]	Tariff-rate quota	20% tariff on covered imports in excess of 7,000,000 short tons	17% tariff on covered imports in excess of 7,500,000 short tons	14% tariff on covered imports in excess of 8,000,000 short tons	11% tariff on covered imports in excess of 8,500,000 short tons[3]	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
Carbon and alloy steel plate	Koplan, Miller, Hillman[2]	Tariff	20%	17%	14%	11%	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
	Okun	Quota	1,232,260 short tons	1,269,227 short tons	1,307,304 short tons		Mexico
Carbon and alloy steel hot-rolled flat products	Koplan, Miller, Hillman[2]	Tariff	20%	17%	14%	11%	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
	Okun	Quota	4,928,712 short tons	5,076,573 short tons	5,228,871 short tons		Mexico
Carbon and alloy steel cold-rolled flat products	Koplan, Miller, Hillman[2]	Tariff	20%	17%	14%	11%	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
	Okun	Quota	2,796,196 short tons	2,880,082 short tons	2,966,485 short tons		Mexico
Carbon and alloy steel coated products	Koplan, Miller, Hillman[2]	Tariff	20%	17%	14%	11%	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
	Okun	Quota	1,683,282 short tons	1,733,781 short tons	1,785,794 short tons		Mexico

[1] Imports from Canada, Mexico, Israel, Jordan, and beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preference Act are excluded unless specifically noted in this column.

[2] Pursuant to section 330(d)(2) of the Tariff Act of 1930, this remedy recommendation is to be treated as the remedy finding of the Commission.

[3] Chairman Koplan and Commissioners Miller and Hillman only.

[4] Commissioner Bragg only.

[5] Commissioner Devaney only.

Product	Commissioner/Remedy Recommendation		Year 1	Year 2	Year 3	Year 4	Special Findings
Carbon and alloy steel tin products	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[6] CBERA[7]
	Miller	Tariff	20%	17%	14%	11%	Canada
Carbon and alloy steel hot-rolled bar	Koplan, Miller, Hillman[8]	Tariff	20%	17%	14%	11%	Canada Mexico[9]
	Bragg, Devaney	Tariff	35%	33%	31%	26%	CBERA[7]
	Okun	Quota	1,961,648 short tons	2,020,497 short tons	2,081,112 short tons		Canada
Carbon and alloy steel cold-finished bar	Koplan, Miller, Hillman[8]	Tariff	20%	17%	14%	11%	Canada
	Bragg, Devaney	Tariff	35%	33%	31%	26%	CBERA[7]
	Okun	Quota	246,033 short tons	253,414 short tons	261,016 short tons		Canada
Carbon and alloy steel rebar	Koplan, Miller, Hillman[8]	Tariff	10%	8%	6%	4%	
	Bragg, Devaney	Tariff	35%	33%	31%	26%	CBERA[7]
	Okun	Quota	1,054,266 short tons	1,085,894 short tons	1,118,470 short tons		
Carbon and alloy steel welded tubular products other than OCTG	Koplan, Miller	Tariff-rate quota	20% tariff on covered imports in excess of 2,600,000 short tons	17% tariff on covered imports in excess of 2,680,000 short tons	14% tariff on covered imports in excess of 2,760,000 short tons	11% tariff on covered imports in excess of 2,840,000 short tons	Canada Mexico
	Okun, Hillman	Tariff-rate quota	20% tariff on covered imports in excess of 1,400,443 short tons	17% tariff on covered imports in excess of 1,442,456 short tons	14% tariff on covered imports in excess of 1,485,730 short tons	11% tariff on covered imports in excess of 1,530,302 short tons[10]	
	Bragg, Devaney	Tariff	30%	28%	26%	21%	Canada[6] CBERA[7]

[6] Commissioner Bragg only.

[7] Commissioner Devaney only.

[8] Pursuant to section 330(d)(2) of the Tariff Act of 1930, this remedy recommendation is to be treated as the remedy finding of the Commission.

[9] Chairman Koplan and Commissioner Miller only.

[10] Commissioner Hillman only.

Product	Commissioner/Remedy Recommendation		Year 1	Year 2	Year 3	Year 4	Special Findings
Carbon and alloy steel fittings and flanges	Koplan, Okun, Miller, Hillman[11]	Tariff	13%	10%	7%	4%[12]	Canada[13] Mexico[14]
	Bragg, Devaney	Tariff	30%	28%	26%	21%	Canada[15] Mexico[15] CBERA[16]
Stainless steel bar	Koplan, Miller, Hillman[11]	Tariff	15%	12%	9%	6%	Canada
	Okun	Quota	109,440 short tons	112,724 short tons	116,106 short tons		Canada
	Bragg	Tariff	25%	20%	15%		
	Devaney	Quota and tariff	Average quantity of imports during 1996-98 plus 15%	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98		CBERA
Stainless steel rod	Koplan, Miller, Hillman[11]	Tariff	20%	17%	14%	11%	
	Okun	Quota	62,573 short tons	64,451 short tons	66,385 short tons		
	Bragg	Tariff	25%	20%	15%		
	Devaney	Quota and tariff	Average quantity of imports during 1996-98 plus 15%	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98		
Tool steel	Koplan	Tariff	10%	8%	6%	4%	
	Bragg	Tariff	25%	20%	15%		
	Devaney	Quota and tariff	Average quantity of imports during 1996-98 plus 15%	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98		

[11] Pursuant to section 330(d)(2) of the Tariff Act of 1930, this remedy recommendation is to be treated as the remedy finding of the Commission.

[12] Chairman Koplan and Commissioners Miller and Hillman only.

[13] Vice Chairman Okun and Commissioners Miller and Hillman only.

[14] Chairman Koplan, Vice Chairman Okun, and Commissioner Miller only.

[15] Commissioner Bragg only.

[16] Commissioner Devaney only.

Product	Commissioner/Remedy Recommendation		Year 1	Year 2	Year 3	Year 4	Special Findings
Stainless steel wire	Koplan	Tariff	8%	7%	6%	5%	
	Bragg	Tariff	15%	10%	5%		
	Devaney	Quota and tariff	Average quantity of imports during 1996-98 plus 15%	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98		
Stainless steel fittings and flanges	Koplan	Tariff	15%	12%	9%	6%	
	Bragg	Tariff	30%	25%	20%		Canada Mexico
	Devaney	Quota	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98	Canada Mexico

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2150–01]

Extension of Memorandum of Understanding for Fines Mitigation Under Section 273 of the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Air and sea transportation companies (carriers) may enter into a memorandum of Understanding (MOU) with the Immigration and Naturalization Service (Service). This MOU provides for mitigation of fines imposed under section 273 of the Immigration and Nationality Act (Act) related to transporting passengers without passports or visas. By signing the MOU, the carrier agrees to perform certain measures aimed at intercepting improperly documented aliens at foreign ports-of-embarkation. These MOUs expired on September 30, 2001. This notice services to extend the expiration date until September 30, 2002.

DATES: This notice is effective December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Una Brien, National Fines Office, Immigration and Naturalization Service, 1525 Wilson Blvd., Suite 425, Arlington, VA 22209, telephone (202) 305–7018.

SUPPLEMENTARY INFORMATION:

Under What Authority Can the Service Reduce Fines?

Pursuant to section 273(e) of the Act, a violation for section 273(1) of the Act may be reduced, refunded, or waived in cases in which a carrier demonstrates that it screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.

The Service published a final rule in the **Federal Register** at 63 FR 23643 (April 30, 1998) establishing procedures that carriers must undertake for the proper screening of passengers at the ports-of-embarkation to become eligible for a reduction, refund, or waiver of a fine imposed under section 273 of the Act.

The final rule provided that carriers that voluntarily signed at MOU with the Service would receive an automatic reduction, refund, or waiver of fines imposed under section 273 of the Act. By signing the MOU, the carrier agrees in writing to meet passenger screening standards stated in 8 CFR 273.3, to train employees in documentary requirements, and to pay fines and user fees promptly. The Service agrees to provide document training and information guides to carriers and to mitigate fines as appropriate.

How Does the Service Measure the Carrier's Screening Performance?

The numerical standard, or Acceptable Performance Level (APL), is calculated by adding the total number of section 273(a)(1) violations involving nonimmigrants for all carriers, divided by the total number of nonimmigrants transported by all carriers, multiplied by 1,000. Each carrier is then rated against the APL using individual Performance Levels (PL). A carrier's individual PL is calculated by applying the same formula used to calculate the APL.

Carriers that meet or exceed the APL may be eligible for automatic fines reductions if the carrier entered into an MOU with the Service.

If a carrier's PL is not at or better than the APL, the carrier may still receive an automatic fine reduction of 25 percent if it is signatory to and in compliance with the MOU.

In order to provide carriers with additional incentives to screen documents, a second reduction factor (APL2) was developed. The APL2 uses the same formula but only uses the number of violations and total passenger counts for carriers who PL falls between 0 and the APL. These carriers will automatically receive an additional 25 percent reduction.

Why Is the Service Extending the Expiration Date for MOUs?

The Service is not contemplating any amendments to the current MOU before September 30, 2002. In this light, an extension of all existing MOUs will benefit both the Service and the carriers by avoiding the administrative costs that would result had the Service required that a new MOU be executed for each carrier. Carriers will remain eligible for automatic fine reductions during the extended period of the MOUs validity as long as the signatory carrier is in compliance with screening standards, training requirements, and payment requirements enumerated in the MOUs.

Will the Measurements for Screening Performance Be Changed?

The measurement for screening performance set forth in the **Federal Register** at 63 FR 23643 (April 30, 1998) will continue to remain in effect. The Service will inform carriers of any plans to change the methods used to calculate a carrier's screening performance by publishing a notice in the **Federal Register.**

Can a Carrier Sign Up For the MOU After September 30, 2001?

A carrier can apply to be signatory to the MOU at any time. A carrier must meet all requirements before its MOU will be approved. Generally, a carrier must have a PL either at or better than the Service's APL and must be current in its payment of all administrative fines, liquidated damages, and user fees. If a carrier does not have a PL or does not have a PL that meets the Service's APL, the carrier must submit evidence to demonstrate that it has screening procedures in place to prevent transporting improperly documented aliens to the United States. Once an MOU is approved, violations that occurred on or after the date of the MOU signing will receive the automatic reductions.

How Does a Carrier or the Service Terminate an Existing MOU?

Either party may terminate an MOU upon 30 days via written notice.

Dated: September 28, 2001.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 01–31913 Filed 12–27–01; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request; Correction

ACTION: Correction.

SUMMARY: In **Federal Register** Volume 66, Number 244, beginning on page 65513 in the issue of Wednesday, December 19, 2001, under Current Actions, under Average hours per response, make the following corrections: On page 65513,

SUPPLEMENTARY INFORMATION, Background, third sentence, reads ''This information collection contains all recordkeeping and reporting requirements which are derived from the implementing regulations found at Title 41 of the Code of Federal Regulations, Chapter 60.'' Strike the word ''all''. On page 65514, the Average hours per response for the Standard Form 100 was previously listed as 3.8

hours. This should be changed to 3.7 hours.

Dated: December 20, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 01–31962 Filed 12–27–01; 8:45 am]

BILLING CODE 4510–CM–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following information collection: (1) 29 CFR part 825, The Family and Medical Leave Act of 1993.

DATES: Written comments must be submitted to the office listed in the addressee section below by February 26, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451, E-mail: *pforkel@fenix2.dol-esa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3, 107 Stat. 6, 29 U.S.C. 2601, which became effective on August 5, 1993, requires private sector employers of 50 or more employees, and public agencies, to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to eligible employees for certain family and medical reasons. Leave must be granted to eligible employees because of the birth of a child and to care for the newborn child, because of placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform any of the essential functions of his or her job. This information collection contains all recordkeeping and notification requirements associated with the Act and regulations. Two optional forms are included in this information collection request. The Certification of Health Care Provider (WH–380) may be used to certify a serious health condition under FMLA. The Employer Response to Employee Request for Family or Medical Leave (WH–381) may be used by an employer to respond to a leave request under FMLA. Both forms are third-party notifications and are sent to the employee; they are not submitted to the Department of Labor.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under FMLA; and in order for the Department of Labor to carry out its statutory obligation under FMLA to investigate and ensure employer compliance.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: 29 CR part 825, The Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.

Agency Numbers: WH–380, WH–381.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit Institutions; Farms, State, Local or Tribal Government.

Frequency: On occasion (recordkeeping, third-party disclosure).

Total Respondents: 4.7 million.

Total Responses: 10.107 million.

Time per Record: 1 to 10 minutes.

Estimated Total Burden Hours: 718,529.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 7, 2001.

Margaret J. Sherrill,

Chief, Branch of Management, Review, and Internal Control, Chief, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 01–31963 Filed 12–27–01; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary

of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine
ME010001 (Mar. 2, 2001)
ME010002 (Mar. 2, 2001)
ME010008 (Mar. 2, 2001)
ME010009 (Mar. 2, 2001)
ME010012 (Mar. 2, 2001)
New York
NY010002 (Mar. 2, 2001)
NY010003 (Mar. 2, 2001)
NY010007 (Mar. 2, 2001)

Volume II

Maryland
MD010002 (Mar. 2, 2001)
Virginia
VA010003 (Mar. 2, 2001)
VA010005 (Mar. 2, 2001)
VA010006 (Mar. 2, 2001)
VA010015 (Mar. 2, 2001)
VA010018 (Mar. 2, 2001)
VA010022 (Mar. 2, 2001)
VA010023 (Mar. 2, 2001)
VA010033 (Mar. 2, 2001)
VA010034 (Mar. 2, 2001)
VA010035 (Mar. 2, 2001)
VA010036 (Mar. 2, 2001)
VA010039 (Mar. 2, 2001)
VA010046 (Mar. 2, 2001)
VA010055 (Mar. 2, 2001)
VA010069 (Mar. 2, 2001)
VA010076 (Mar. 2, 2001)
VA010084 (Mar. 2, 2001)

Volume III

Mississippi
MS010003 (Mar. 2, 2001)
MS010050 (Mar. 2, 2001)
MS010055 (Mar. 2, 2001)
MS010057 (Mar. 2, 2001)

Volume IV

None

Volume V

Arkansas
AR010001 (Mar. 2, 2001)
AR010003 (Mar. 2, 2001)
AR010008 (Mar. 2, 2001)
AR010023 (Mar. 2, 2001)
Iowa
IA010005 (Mar. 2, 2001)
IA010008 (Mar. 2, 2001)
IA010047 (Mar. 2, 2001)
Kansas
KS010008 (Mar. 2, 2001)
Missouri
MO010001 (Mar. 2, 2001)
MO010002 (Mar. 2, 2001)
MO010011 (Mar. 2, 2001)
MO010042 (Mar. 2, 2001)
MO010050 (Mar. 2, 2001)
MO010054 (Mar. 2, 2001)
MO010057 (Mar. 2, 2001)
MO010058 (Mar. 2, 2001)

Volume VI

Alaska
AK010001 (Mar. 2, 2001)
AK010002 (Mar. 2, 2001)
AK010003 (Mar. 2, 2001)
AK010006 (Mar. 2, 2001)
Colorado
CO010001 (Mar. 2, 2001)
CO010008 (Mar. 2, 2001)
CO010009 (Mar. 2, 2001)
Oregon
OR010001 (Mar. 2, 2001)
Washington
WA010001 (Mar. 2, 2001)
WA010002 (Mar. 2, 2001)
WA010003 (Mar. 2, 2001)
WA010007 (Mar. 2, 2001)

Volume VII

California
CA010001 (Mar. 2, 2001)
CA010002 (Mar. 2, 2001)
CA010004 (Mar. 2, 2001)
CA010007 (Mar. 2, 2001)
CA010009 (Mar. 2, 2001)
CA010027 (Mar. 2, 2001)
CA010028 (Mar. 2, 2001)
CA010029 (Mar. 2, 2001)
CA010030 (Mar. 2, 2001)
CA010031 (Mar. 2, 2001)
CA010033 (Mar. 2, 2001)
CA010035 (Mar. 2, 2001)
CA010036 (Mar. 2, 2001)
CA010037 (Mar. 2, 2001)
CA010038 (Mar. 2, 2001)
CA010039 (Mar. 2, 2001)
CA010040 (Mar. 2, 2001)
CA010041 (Mar. 2, 2001)
Nevada
NV010003 (Mar. 2, 2001)
NV010005 (Mar. 2, 2001)
NV010007 (Mar. 2, 2001)
NV010009 (Mar. 2, 2001)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.*

They are also available electronically by subscription to the Davis-Bacon

Online Service (*http://davisbacon.fedworld.gov)of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 20th day of December 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–31950 Filed 12–27–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises the user fees for MSHA's Approval and Certification Center (A&CC). Fees compensate MSHA for the costs incurred for testing, evaluating, and approving certain products for use in underground mines. The 2002 fees are based on MSHA's actual expenses for fiscal year 2001. The fees reflect changes both in MSHA's approval processing operations and in the costs to process approval actions.

DATES: This fee schedule is effective from January 1, 2002 through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Steven J. Luzik, Chief, Approval and Certification Center (A&CC), 304–547–2029 or 304–547–0400.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products. The rule established specific procedures for calculating, administering, and revising user fees. MSHA has revised its fee schedule for 2001 in accordance with the procedures of that rule. This new fee schedule is included below. For approval applications postmarked before January 1, 2002, MSHA will continue to calculate fees under the previous (2001) fee schedule, published on December 28, 2000.

Fee Computation

In general, MSHA computed the 2002 fees based on fiscal year 2001 data. We calculated a weighted-average, direct cost for all the services provided during fiscal year 2001 in the processing of requests for testing, evaluation, and approval of certain products for use in underground mines. From this cost, we calculated a single hourly rate to apply uniformly across all of the product approval categories during 2002.

Signed in Arlington, Virginia, this 19th day of December, 2001.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 2002

[Based on FY 2001 data]

Action title	Hourly rate
Fees for Testing, Evaluation, and Approval of all Mining Products[1] ..	$57
Retesting for Approval as a Result of Post-Approval Product Audit[2] ..	.....
30 CFR PART 15—EXPLOSIVES TESTING	
Permissibility Tests for Explosives:	
Weigh-in	462
Physical Exam: First size	325
Chemical Analysis	1,977
Air Gap—Minimum Product Firing Temperature	460
Air Gap—Room Temperature	352
Pendulum Friction Test	163
Detonation Rate	352
Gallery Test 7	7,436
Gallery Test 8	5,533
Toxic Gases (Large Chamber)	805
Permissibility Tests for Sheathed Explosives:	
Physical Examination	128
Chemical Analysis	1,044
Gallery Test 9	1,944
Gallery Test 10	1,944
Gallery Test 11	1,944
Gallery Test 12	1,944
Drop Test	648
Temperature Effects/Detonation	672
Toxic Gases	580

[1] Full approval fee consists of evaluation cost plus applicable test costs.

[2] Fee based upon the approval schedule in effect at the time of retest.

Note: When the nature of the product requires that we test and evaluate it at a location other than our premises, you must reimburse us for the traveling, subsistence, and incidental expenses of our representative in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 01–31855 Filed 12–27–01; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0150(2002)]

Standard on the Control of Hazardous Energy sources (Lockout/Tagout) (29 CFR 1910.147); Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comment concerning its proposal to decrease the existing burden-hour estimates for, and to extend OMB approval of, the information-collection requirements of the Standard on the Control of Hazardous Energy Sources (Lockout/Tagout) (29 CFR 1910.147)[1] This standard regulates control of hazardous energy sources using lockout or tagout procedures while employees service, maintain, or repair machines or equipment if activation, start up, or release of energy from the energy source is possible. The paperwork requirements of the standard specify that employers must ensure that employees use these energy-control procedures effectively and safely,

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours decreased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to decrease its estimate of the burden hours imposed by the existing paperwork requirements.

thereby preventing death and serious injury caused by uncontrolled release of hazardous energy.

DATES: Submit written comments on or before February 26, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0150(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the standard is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov,* and select ''*Information Collection Requests.*''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

OSHA's Standard on the Control of Hazardous Energy (Lockout/Tagout) (29 CFR 1910.147; the ''Standard'') contains the following paperwork requirements:

• *Paragraph (c)(4).* Employers must document the procedures used to isolate from its energy source, and render inoperative, any machine or equipment prior to servicing, maintenance, or repair by employees. These procedures are necessary if activation, start up, or release of stored energy from the energy source is possible, and such release could cause injury to the employees. The required documentation must clearly and specifically outline the scope, purpose, authorization, rules, and techniques employees are to use to control hazardous energy, and the means to enforce compliance, and include a number of elements specified by this paragraph.

The employer will use the information in this document as the basis for informing and training employees about the purpose and function of the energy-control procedures, and the safe application, use, and removal of energy controls. In addition, this information enables employers to effectively identify operations and processes in the workplace that require energy-control procedures.

• *Paragraph (c)(6)(ii).* The Standard requires employers to conduct inspections of energy-control procedures at least annually. An authorized employee (other than an authorized employee using the energy-control procedure that is the subject of the inspection) is to conduct the inspection and correct any deviations or inadequacies identified. For procedures involving either lockout or tagout, the inspection must include a review, between the inspector and each authorized employee, of that employee's responsibilities under the procedure; for procedures using tagout systems, the review is to assess the employee's knowledge of the training elements required for these systems. Under paragraph (c)(6)(ii), employees must certify the inspection by documenting the date of the inspection, and identifying the machine or equipment inspected and the employee who performed the inspection.

The inspection records provide employers with assurance that employees can safely and effectively service, maintain, and repair machines and equipment covered by the Standard. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard, and that the machines and equipment are safe for servicing, maintenance, and repair.

• *Paragraph (c)(7)(iv).* Under this paragraph, employers must certify that employees completed the required training, and that this training is up-to-date; the certification is to contain each employee's name and the training date. The training program is to enable employees to understand the purpose and function of the energy-control procedures, and provides them with the knowledge and skills necessary for the safe application, use, and removal of energy controls. It specifies a number of elements that employers are to include in the training program for authorized and affected employees, and other employees who work, or may work, near operations using the energy-control procedure. If the employer uses a tagout system, the training program must inform employees of the limitations of tagging systems specified by the Standard. Employers must retrain authorized and affected employees if: A change occurs in their job assignments, the machines, equipment, or processes such that a new hazard is present; the employer revises the energy-control procedures; employers have reason to believe, or the periodic inspection required under paragraph (c)(6) indicates, that deviations and inadequacies exist in an employee's knowledge or use of energy-control procedures.

Training provides employees with the knowledge and skills necessary for implement safe application, use, and removal of energy controls, and enables them to prevent serious accidents by using appropriate control procedures in a safe manner to isolate these hazards. In addition, written certification of the training assures the employer that employees receive the training specified by the Standard, and that retraining occurs as necessary. These records also provide the most efficient means for an OSHA compliance officer to determine whether or not an employer performed the required training at the necessary and appropriate frequencies.

• *Paragraph (c)(9).* This provision requires the employer or authorized employee to notify affected employees prior to applying, and after removing, a lockout or tagout device from a machine or equipment. Such notification informs employees of the impending interruption of the normal production operation, and serves as a remainder of the restrictions imposed on them by the energy-control program. In addition, this requirement ensures that employees do not attempt to reactivate a machine or piece of equipment after an authorized employees isolated its energy source and rendered it inoperative. Notifying employees after removing an energy-control device alerts them that the machines and equipment are no longer safe for servicing, maintenance, and repair.

• *Paragraph (f)(2).* If an onsite employer uses an offsite employer (e.g., contractor) to perform the activities covered by the scope and application of the Standard, the two employers must inform each other regarding their respective lockout or tagout procedures. Onsite employers must ensure their employees understand and comply with the restrictions and prohibitions of the offsite employers' energy-control

programs. This provision provides employees of onsite employers with information about the unique energy-control procedures used by an offsite employer; this information prevents any misunderstanding by either plant employees or outside service personnel regarding the use of lockout or tagout procedures in general, and the use of specific lockout or tagout devices selected or a particular application.

II. Special Issues for Comment

OSHA has a particular interests in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to decrease the existing burden-hour estimate for, and to extend OMB's approval of, the paperwork requirements specified by the Standard. The Agency is proposing to reduce the total burden-hour estimate from 1,236,149 hours to 1,109,637 hours, a total decrease of 126,512 hours. This decrease in burden hours results in large part from reducing the number of establishments required to update energy-control programs and to inspect energy-control procedures. In addition, capital costs are rising from $0 to $14,582,134 because OSHA is accounting for the cost of purchasing new, and replacing worn or damaged, locks and tags, as well as replacing the means of attaching tags to an energy source (e.g., nylon cable ties). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Standard on the Control of Hazardous Energy Sources (Lockout/Tagout) (29 CFR 1910.147).

OMB Number: 1218–0150.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 2,351,014.

Frequency of Recordkeeping: On occasion; annually; other (initially).

Average Time per Response: Varies from five seconds (.001 hour) to notify an employer after removing a lockout or tagout device, to two and one-half hours (2.50 hours) to develop and document an energy-control procedure.

Total Annual Hours Requested: 1,109,637.

Total Annual Costs (O&M): $14,582,134.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (62 FR 50017).

Signed at Washington, DC, on December 21th, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–31964 Filed 12–27–01; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 01–162]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This collection provides NASA with information necessary for the effective management of government property.

DATES: Comments on this proposal should be received by January 28, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700–0017.

Type of Review: Extension.

Need and Uses: NASA is required to account for Government-owned/contractor-held property in accordance with SFFAS #6. NASA Form 1018 provides for the annual collection of summary data from these records to ensure the accurate reflection of Agency assets and related depreciation on the financial statements and essential property management information.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 860.

Responses Per Respondent: 1.

Annual Responses: 1.

Hours Per Request: 8.

Annual Burden Hours: 7000.

Frequency of Report: Annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–31955 Filed 12–27–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 01–161]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The financial recordkeeping information and reports obtained through this collection are used by NASA to ensure proper accountability for and use of NASA-provided funds.

DATES: Comments on this proposal should be received by January 28, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Financial Monitoring and Control, Grants.

OMB Number: 2700–0049.

Type of review: Extension.

Need and Uses: Information is used by NASA to effectively maintain an appropriate internal control system for

grants and cooperative agreements with institutions of higher education and other non-profit organizations, and to comply with statutory requirements on the accountability of public funds.

Affected Public: Not-for-profit institutions.

Number of Respondents: 7,149.
Responses Per Respondent: 5.
Annual Responses: 37,696.
Hours Per Request: 7½ hrs.
Annual Burden Hours: 284,792.
Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–31956 Filed 12–27–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 01–160]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection is used by NASA to effectively maintain an appropriate internal control system for equipment and property provided or acquired under grants or cooperative agreements with institutions of higher education and other non-profit organizations.

DATES: Comments on this proposal should be received by January 28, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, Office of the Chief Information Officer, (202) 358–1372.

Title: Property Management and Controls, Grants.

OMB Number: 2700–0047.

Type of review: Extension.

Need and Uses: Collection is required to ensure proper accounting of Federal property provided under grants and cooperative agreements with institutions of higher education and to satisfy external requirements of internal control of property provided by NASA or acquired with NASA funds.

Affected Public: Not-for-profit institutions.

Number of Respondents: 7,149.
Responses Per Respondent: 4.
Annual Responses: 28,596.
Hours Per Request: 4 hrs.
Annual Burden Hours: 114,384.
Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–31957 Filed 12–27–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 01–159]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This collection is required to document changes to NASA contracts and ensure that they are made quickly and in a cost-effective manner.

DATES: Comments on this proposal should be received by January 28, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Contract Modifications, NASA FAR Supplement Part 18–43.

OMB Number: 2700–0054.

Type of Review: Extension.

Need and Uses: NASA procurement and technical personnel use the information obtained by this collection to manage each contract, and to ensure that the Agency can obtain the best goods and services at the best prices.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 88.
Responses Per Respondent: 2.
Annual Responses: 176.
Hours Per Request: 45.
Annual Burden Hours: 7,920.
Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–31958 Filed 12–27–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 01–158]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The information obtained through this collection is used by NASA management and contracting offices to assess progress toward meeting statutory goals for small businesses/small disadvantaged businesses.

DATES: Comments on this proposal should be received by January 28, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Small Business and Small Disadvantaged Business Concerns and Related Contract Provisions, NASA FAR Supplement Part 18–19, SF 295.

OMB Number: 2700–0073.

Type of Review: Extension.

Need and Uses: NASA requires reporting of small disadvantaged business subcontract awards in order to meet its Congressionally mandated goals.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 225.

Responses Per Respondent: 2.

Annual Responses: 450.

Hours Per Request: 12.

Annual Burden Hours: 5,400.

Frequency of Report: Semi-annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–31960 Filed 12–27–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 01–157]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection is used by NASA contracting officers to ensure that projected contract cost savings are being realized.

DATES: Comments on this proposal should be received by January 28, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Cost Reduction Proposals under the NASA FAR Supplement Shared Savings Clause.

OMB Number: 2700–0094.

Type of Review: Extension.

Need and Uses: This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives on current and follow-on contracts.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 9.

Responses Per Respondent: 1.25.

Annual Responses: 11.25.

Hours Per Request: 45.

Annual Burden Hours: 506.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–31961 Filed 12–27–01; 8:45 am]

BILLING CODE 7510–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 7, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Collaborative Research in Editions II, submitted to the Division of Research Programs at the September 1, 2001 deadline.

2. *Date:* January 10, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: M–07.
Program: This meeting will review applications for Collaborative Research in Philosophy and Social Thought, submitted to the Division of Research Programs at the September 1, 2001 deadline.

3. *Date:* January 11, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Collaborative Research in European Studies, submitted to the Division of Research Programs at the September 1, 2001 deadline.

4. *Date:* January 11, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Exemplary Education Projects, submitted to the Division of Education Programs at the October 15, 2001 deadline.

5. *Date:* January 14, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Humanities-Based Projects in After-School Programs, submitted to the Division of Education Programs at the November 1, 2001 deadline.

6. *Date:* January 15, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Schools for a New Millennium, submitted to the Division of Education Programs at the October 1, 2001 deadline.

7. *Date:* January 15, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowship Programs at Independent Research Institutions, submitted to the Division of Research Programs at the September 1, 2001 deadline.

8. *Date:* January 17, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Schools for a New Millennium, submitted to the Division of Education Programs at the October 1, 2001 deadline.

9. *Date:* January 18, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Exemplary Education Projects, submitted to the Division of Education Programs at the October 15, 2001 deadline.

10. *Date:* January 24, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: Library of Congress, Jefferson Building.
Program: This meeting will review applications for Library of Congress John W. Kluge Fellowships Program, submitted to the Division of Research Programs at the October 15, 2001 deadline.

11. *Date:* January 25, 2002.
Time: 9:00 a.m. to 5:00 p.m.
Room: Library of Congress, Jefferson Building.
Program: This meeting will review applications for Library of Congress John W. Kluge Fellowships Program, submitted to the Division of Research

Programs at the October 15, 2001 deadline.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 01–31874 Filed 12–27–01; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 64, ''Travel Voucher (Part 1)'' NRC Form 64A, ''Travel Voucher (Part 2)'' NRC Form 64B, ''Optional Travel Voucher (Part 2)''.

2. *Current OMB approval number:* 3150–0192.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Contractors, consultants and invited NRC travelers who travel in the course of conducting business for the NRC.

5. *The number of annual respondents:* 100.

6. *The number of hours needed annually to complete the requirement or request:* 100.

7. *Abstract:* As a part of completing the travel process, the traveler must file travel reimbursement vouchers and trip reports. The respondent universe for the above forms includes consultants and contractors and those who are invited by the NRC to travel, e.g., prospective employees. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

Submit, by February 28, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *BJS1@NRC.GOV.*

Dated at Rockville, Maryland, this 20th day of December 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–31924 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

AmerGen Energy Company, LLC (Oyster Creek Nuclear Generating Station); Exemption

I

AmerGen Energy Company (AmerGen or the licensee) is the holder of Facility Operating License No. DPR–16, which authorizes operation of the Oyster Creek Nuclear Generating Station at power levels not to exceed 1930 megawatts thermal. The facility consists of one boiling-water reactor located at the licensee's site in Ocean County, New Jersey. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or Commission) now or hereafter in effect.

II

Section IV.F.2.b of Appendix E to Title 10 of the Code of Federal Regulations (10 CFR) part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years and indicates the exercise may be included in the biennial exercise required by paragraph 2.c. Paragraph 2.c requires offsite plans for each site to be exercised biennially with participation by each offsite authority having a role under the plan.

During such biennial exercises, the NRC evaluates onsite emergency preparedness activities and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. The licensee successfully conducted a full-participation exercise for Oyster Creek on October 5, 1999. By letter dated October 8, 2001, the licensee requested an exemption from Section IV.F.2.c of Appendix E regarding the conduct of a full-participation exercise originally scheduled for October 16, 2001. Specifically, the licensee proposed rescheduling the exercise originally scheduled for October 16, 2001, to sometime before the end of 2002. However, the next exercise will continue to be scheduled biennially from 2001.

AmerGen is among several licensees requesting exercise exemptions in the wake of the National Emergency of September 11, 2001. It is recognized that it was not appropriate to conduct an exercise during the period of disruption and heightened security directly after the National Emergency. The State of New Jersey was initially involved with the recovery response to the National Emergency and the Federal Emergency Management Agency (FEMA) Region II is deeply involved with recovery efforts in New York City. Further, New Jersey has been deeply involved with the response to mail-based terrorism in the weeks that followed the National Emergency. Considering the extraordinary circumstances, a schedular exemption was expected and is acceptable. However, in this period of heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the full-participation exercise as soon as practical to demonstrate (and maintain) readiness.

The licensee is faced with a difficult task to coordinate and schedule an exercise that involves multiple governmental agencies at the Federal, State, and local level. Many local response organizations depend on volunteers. In order to accommodate this difficult task, the NRC has allowed licensees to schedule full-participation exercises at any time during the calendar biennium. This gives the licensee the flexibility to schedule the exercise within a 12- to 36-month

window and still meet the biennial requirement specified in the regulations.

The licensee requested relief from section IV.F.2.c of Appendix E to 10 CFR part 50. Although the intent of the request is clear, i.e., the need to postpone the biennial exercise, the citation of regulations to accomplish that intent may not be complete. Section IV.F.2.b of Appendix E to 10 CFR part 50 may also be cited for completeness. The Commission's analysis encompassed the technical issues necessary to grant a schedular exemption from sections IV.F.2.b and c for the conduct of the biennial exercise.

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

III

The licensee requests a one-time change in the schedule for the next biennial exercise for Oyster Creek. Subsequent biennial exercises for Oyster Creek would be scheduled at no greater than 2-year intervals in accordance with 10 CFR part 50, Appendix E, section IV.F.2.c. Accordingly, the exemption would provide only temporary relief from that regulation, in that the next biennial exercise is scheduled to take place in 2003.

As indicated in the licensee's request for an exemption of October 8, 2001, the licensee had originally scheduled a full-participation exercise for October 16, 2001. As further set forth in that letter, however, AmerGen requested a schedular exemption as a result of the national security threat in the United States, and the response, recovery, and other activities associated with the September 11, 2001, attacks on the World Trade Center. AmerGen is among several licensees requesting exercise exemptions in the wake of the national emergency of September 11, 2001. It is recognized that it was not appropriate to conduct an exercise during the period of disruption and heightened security directly after the national emergency. However, in this period of continued heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the exercise as soon as practical to demonstrate and maintain readiness.

The staff completed its evaluation of the licensee's request for an exemption. The State of New Jersey was initially involved with the recovery response to the national emergency and the Federal Emergency Management Agency (FEMA) Region II is deeply involved with recovery efforts in New York City. Further, New Jersey has been deeply involved with the response to mail-based terrorism in the weeks that followed the national emergency. The staff considered the schedule and resource issues resulting from the national emergency, and the fact that AmerGen conducted the previous Oyster Creek full participation exercise on October 5, 1999.

Oyster Creek successfully conducted a full-participation exercise in October 5, 1999, which was evaluated by the NRC (Inspection Report No. 50–219/99–06) and FEMA (Final Exercise Report Oyster Creek December 29, 2000). The licensee was scheduled to conduct a biennial full participation exercise on October 16, 2001. The requested exemption is to postpone that exercise and conduct it during 2002. The interval between biennial exercises could be as long as 39 months, if the exercise were conducted in December of 2002. This is a bit outside the normal parameters of exercise conduct, in which a period of 36 months is acceptable, as long as the sequential exercises are conducted within the calender biennium. However, given the circumstances and the fact that other 2001 exercises in NRC Region I will be rescheduled for 2002, this time frame is acceptable. To reschedule this exercise, AmerGen will have to coordinate with local and State supporting agencies as well as NRC Region I and FEMA Region II. This effort will be complicated by the fact that NRC and FEMA will have to support the normally scheduled exercises in addition to the rescheduled exercises during 2002. The increased flexibility requested by the licensee may be necessary for scheduling of Federal resources more so than local or utility resources.

The licensee provided a description of recently completed drills and training evolutions, as well as the planned training and drill schedule for the next year. The previous Oyster Creek full-participation exercise was conducted on October 5, 1999. The results of this exercise determined that the overall performance of the emergency response organization demonstrated that onsite emergency plans are adequate and that the organization is capable of implementing these plans (reference NRC Inspection Report No. 50–219/99–06.) One exercise weakness involving technical support center communications was identified and the licensee stated that prompt corrective actions were implemented. The State of New Jersey and local governments fully participated in the October 5, 1999 exercise. The licensee stated that corrective actions are complete for the only area requiring corrective action, which involved a facsimile machine problem.

Subsequent to the October 5, 1999 full participation exercise, Oyster Creek conducted emergency response drills on March 29, 2000, May 11, 2000, May 17, 2000, May 18, 2000, and an annual exercise on September 20, 2000. The May 11, 17, and 18, 2000, drills were specifically conducted as proficiency enhancing drills for new emergency response team personnel. The September 20, 2000, annual exercise included active participation by the New Jersey Office of Emergency Management. These drills and the self-evaluated annual exercise satisfy the drill requirements of 10 CFR part 50, Appendix E, section IV.F.2.b. Overall performance throughout these drills and exercises demonstrated successful implementation of the Emergency Plan and its Implementing Procedures. AmerGen stated that issues identified during these drills, exercises, and associated critiques are being resolved under the Oyster Creek corrective action program. AmerGen has determined that there will be no decrease in safety as a result of this exemption. Additionally, Oyster Creek conducted a training drill on July 11, 2001, a pre-exercise drill on September 4, 2001, and an additional pre-exercise drill on September 24, 2001. The State of New Jersey and local governments have maintained radiological emergency preparedness by participating in the September 4, 2001, drill. Offsite agencies have completed, without issue, all of the out-of-sequence exercise demonstrations, encompassing FEMA Objective Nos. 15, 16, 17, 18, 19, 20, 21, and 22, in conjunction with the previously planned October 16, 2001, full-participation exercise. Completion of these exercise demonstrations provides added assurance of emergency response preparedness.

AmerGen has stated that, on a continuing basis, measures will be taken to maintain emergency preparedness at Oyster Creek. The existing training and drill schedule currently in place for emergency response activities will remain in place and adjusted as necessary to ensure the readiness of

both onsite and offsite emergency response personnel. This includes annual training, requalification, and participation drills for onsite emergency responders. It appears that these measures will maintain an adequate level of emergency preparedness during this period.

Licensee representatives meet routinely with State and local emergency management and have discussed rescheduling of the biennial exercise with these groups. K. Hayden, Captain, Acting Commanding Officer of the New Jersey State Police Emergency Management Section, has submitted a similar exemption request to FEMA RII.

The national emergency of September 11, 2001, rendered the conduct of a nuclear power plant exercise in the previously scheduled time frame inappropriate. Application of the applicable regulation would not serve the underlying purpose of the rule, in that diversion of public agency attention from recovery from the national emergency and management of the mail based terrorist events in New Jersey would not contribute to public health and safety. Postponement of exercise conduct is a benefit to public health and safety that compensates for any decrease in safety that may result. Additionally, the licensees drill program includes offsite agency participation and is a compensating measure contributing to justification of the exemption. The exemption only provides temporary relief from the applicable regulation, in that AmerGen has committed to conduct the exercise during the next calendar year (2002). AmerGen made a good faith effort to conduct the exercise and comply with regulations. The circumstances dictating the request for exemption are beyond the licensee's control. The regulations of this part do allow for the postponement of exercises and the regulations have been invoked for appropriate circumstances. This being the case, the occasional need to postpone exercises was considered as a potential circumstance. The NRC staff has determined that conduct of the full-participation exercise as early as practical in 2002 is prudent even though the licensee is expected to conduct another full-participation exercise in 2003. Accordingly, the licensee made a good faith effort to comply with the schedule requirements of Appendix E for full-participation exercises. The staff finds the request acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR part 50, Appendix E, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants AmerGen a one-time schedular exemption from the requirements to conduct an exercise of its onsite and offsite (with full-participation by each offsite authority having a role under the plan) emergency plans every 2 years as required by sections IV.F.2.b and c of Appendix E to 10 CFR part 50. This conclusion is based on AmerGen's commitment to conduct the postponed exercise in 2002. The staff recommends that AmerGen schedule the exercise as early as practical in 2002, but the exemption is not predicated on AmerGen following this recommendation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (66 FR 65520).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 2001.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31932 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Inc. (Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2); Exemption

I

Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPI or the licensee) is the holder of Facility Operating License Nos. DPR–53 and DPR–69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant (CCNPP), Unit Nos. 1 and 2 at power levels not to exceed 2700 megawatts thermal. The facility consists of two pressurized-water reactors located at the licensee's site in Calvert County, Maryland. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

II

Title 10 of the Code of Federal Regulations (10 CFR), part 50, Appendix E, section IV.F.2.b requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years and indicates the exercise may be included in the full participation biennial exercise required by paragraph 2.c of the same section. In addition, licensees are to take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills. Paragraph 2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. Normally during such biennial full participation exercises, the NRC evaluates onsite, and the Federal Emergency Management Agency (FEMA) evaluates offsite, emergency preparedness activities.

By letter dated September 28, 2001, the licensee requested an exemption from section IV.F.2.c of Appendix E regarding the conduct of a full-participation exercise originally scheduled for September 25, 2001. Specifically, the licensee proposed rescheduling the exercise originally scheduled for September 25, 2001, to sometime prior to December 31, 2002. However, the next full-participation exercise will continue to be scheduled biennially from 2001.

CCNPPI is among several licensees requesting schedular exemptions for emergency exercises in the wake of the national emergency of September 11, 2001. It is recognized that it was not appropriate to conduct an exercise during the period of disruption and heightened security after the national emergency. Considering the extraordinary circumstances, a schedular exemption is appropriate. However, in this period of heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the full-participation exercise as soon as practical to demonstrate and maintain readiness.

The licensee is faced with a difficult task to coordinate and schedule an exercise that involves multiple governmental agencies at the Federal, State, and local level. Many local response organizations depend on volunteers. In order to accommodate this difficult task, the NRC has allowed licensees to schedule full participation exercises at any time during the calendar biennium. This gives the

licensee the flexibility to schedule the exercise within a 12- to 36-month window and still meet the biennial requirement specified in the regulations.

It should be noted that the licensee requested relief from 10 CFR part 50, Appendix E, section IV.F.2.c. While the intent of the request is clear, the NRC staff determined that a schedular exemption from the onsite exercise requirements of 10 CFR part 50, Appendix E, section IV.F.2.b, was also necessary. The following evaluation addresses the technical issues necessary to grant a schedular exemption from requirements in 10 CFR part 50, Appendix E, sections IV.F.2.b and c, to conduct an evaluated biennial exercise.

Pursuant to 10 CFR 50.12, the NRC may grant exemptions from the requirements of its regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) present special circumstances. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

III

The licensee was scheduled to conduct a biennial full participation exercise on September 25, 2001. The requested exemption is to postpone that exercise and conduct it during 2002. The interval between biennial exercises could be as long as 38 months, if the exercise were conducted in December of 2002. However, given the circumstances and the fact that other 2001 exercises in NRC Region I will be rescheduled for 2002, this time frame is acceptable. To reschedule this exercise, the licensee will have to coordinate with local and State supporting agencies as well as NRC Region I and FEMA Region III. This effort will be complicated by the fact that NRC and FEMA will have to support the normally scheduled exercises in addition to the rescheduled exercises during 2002. The increased flexibility requested by the licensee may be necessary for scheduling of Federal resources more so than local or utility resources.

CCNPPI successfully conducted a full-participation exercise in October 1999, which was evaluated by the NRC (NRC Inspection Report Nos. 50–317/99–10 and 50–318/99–10) and FEMA (Final Exercise Report CCNPP, March 14, 2000.) The results of this exercise determined that the overall performance of the emergency response organization demonstrated that onsite emergency plans are adequate and that the organization is capable of implementing these plans.

The licensee provided a description of recently completed drills and training evolutions, as well as the planned training and drill schedule for the next year. CCNPPI had previously conducted one full-participation emergency preparedness exercise on August 23, 2001. Additionally, a site-wide non-state participation drill was conducted on May 24, 2001. Although these drills were not evaluated by NRC and FEMA, the May and August 2001 drill results were critiqued by the emergency response organization and the Nuclear Plant Assessment Department. Issues identified during the drill critiques are being resolved under the corrective action program.

CCNPPI stated that emergency preparedness has been maintained in accordance with the Emergency Response Plan. The requirements for semi-annual health physics drills were met by the conduct of the May 24 and August 23, 2001, drills. The requirement for a post-accident sampling drill was met on June 7, 2001. The annual requirement for an environmental sampling drill was met on September 4, 2001. Dose assessment office drills were conducted on January 17, 2001, and May 29, 2001. The annual requirement for a severe accident management drill was met in the May 24 and August 23 drills.

The State of Maryland and local governments have maintained radiological emergency preparedness by fully participating in the August 23, 2001 drill. Additionally, the State agencies participated in the federally-evaluated Peach Bottom Atomic Power Station exercise on August 15, 2000. Calvert County Public Safety, Calvert Memorial Hospital, and local rescue squads participated in a simulated contaminated injury drill at CCNPP on November 16, 2000. Dorchester County successfully demonstrated corrective action for a deficiency noted in the CALVEX 99 FEMA exercise report.

CCNPPI has stated that between September 2001 and December 2002, measures will be taken to maintain emergency preparedness at CCNPP. The existing training and drill schedule currently in place for emergency response activities will remain in place and be adjusted as necessary to ensure the readiness of both onsite and offsite emergency response personnel. For onsite emergency responders, this includes annual training and participation in drills. CCNPPI will conduct quarterly combined functional and/or activation drills and a self-evaluated annual exercise. These drills and the self-evaluated annual exercise satisfy the drill requirements of 10 CFR part 50, Appendix E, IV.F.2.b. Offsite agencies in Maryland are routinely invited to, and actively participate in, these drills and exercises as a training activity for offsite response personnel. Local response groups conduct annual training and participate in emergency operations center drills. The biennial medical support (MS–1) drill conducted in conjunction with Calvert Memorial Hospital and Calvert County took place in October 2001.

These activities satisfy the drill and exercise requirements of 10 CFR part 50, Appendix E, IV.F.2.b. CCNPPI stated that it meets routinely with State and local emergency management and support groups, has discussed rescheduling of the biennial exercise with these groups, and that these groups support the exercise postponement.

For this exemption request, the special circumstances described in section 50.12(a)(2)(v) of 10 CFR part 50 are present. The exemption only provides temporary relief from the applicable regulation, in that the licensee has committed to conduct the exercise during the next calendar year (2002) and has not requested any permanent changes in future exercise scheduling. The licensee made a good faith effort to conduct the exercise and comply with regulations. The circumstances dictating the request for exemption are beyond the licensee's control. The regulations of this part allow for the postponement of exercises and the regulations have been invoked for appropriate circumstances.

Based upon the consideration of the public health and safety, schedule, and resource issues resulting from the national emergency of September 11, 2001, the staff concludes that the request for exemption is acceptable. The staff has determined that conduct of the full-participation exercise as early as practical in 2002 is prudent even though the licensee is expected to conduct another full-participation exercise in 2003.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and is otherwise in the public interest. Further, the Commission has determined, pursuant to 10 CFR 50.12(a)(v), that special circumstances

are present, in that the exemption would only provide temporary relief from the applicable regulations, and the licensee has made a good faith effort to comply with the regulation. Therefore, the Commission hereby grants CCNPPI a one-time schedular exemption from the requirements to conduct an exercise of its onsite and offsite emergency plans every 2 years as required by 10 CFR part 50, Appendix E, section IV.F.2.b and c. This conclusion is based on the licensee's commitment to conduct the postponed exercise in 2002.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (66 FR 64063).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 2001.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31931 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–269, Docket No. 50–270, Docket No. 50–287, Docket No. 72–040, Docket No. 72–004, Renewed License No. DPR–38, Renewed License No. DPR–47, Renewed License No. DPR–55, and License No. SNM–2503]

Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2 and 3 and Oconee Independent Spent Fuel Storage Installation); Order Approving Transfer of Operating Authority and Conforming Amendments

Duke Energy Corporation (Duke Energy, or DEC) is the holder of Renewed Facility Operating Licenses Nos. DPR–38, DPR–47, and DPR–55, which authorize operation of the Oconee Nuclear Station, Units 1, 2 and 3 and Materials License No. SNM–2503, which authorizes operation of the Oconee Independent Spent Fuel Storage Installation (ISFSI). The Oconee Nuclear Station (Oconee or the Facility) and ISFSI are located in Oconee County, South Carolina.

By application dated July 10, 2001, as supplemented by letters dated October 31, November 1 and 26, and December 10, 2001, (collectively referred to herein as ''the application'' unless otherwise indicated) the Commission was informed that DEC, the licensed operator of the Oconee units and the ISFSI, proposes to enter into an Operation and Maintenance Services Agreement with Duke Energy Nuclear, LLC (Duke Nuclear), and transfer operating authority under the licenses to Duke Nuclear. Under the proposed transaction, Duke Nuclear, which will be a wholly owned indirect subsidiary of DEC, will become a new licensee exclusively authorized to operate Oconee and the ISFSI in accordance with the terms and conditions of the licenses. The transaction involves no change in full ownership of the Facility and the ISFSI by DEC. DEC requested approval of the proposed transfer of operating authority under the Oconee facility renewed operating licenses to Duke Nuclear pursuant to 10 CFR 50.80 and requested approval of conforming amendments pursuant to 10 CFR 50.90 to reflect the transfer. DEC requested approval of the proposed transfer of operating authority under the Oconee ISFSI License SNM–2503 to Duke Nuclear pursuant to 10 CFR 72.50 and requested approval of conforming amendments pursuant to 10 CFR 72.56 to reflect the transfer. The proposed amendments would add Duke Nuclear to the licenses and reflect that Duke Nuclear is exclusively authorized to operate Oconee and the ISFSI. Duke Nuclear will also become a general licensee for storage of spent fuel in certified dry casks at Oconee pursuant to 10 CFR 72.210.

Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on September 25, 2001 (66 FR 49049). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. In addition, pursuant to 10 CFR 72.50, no license shall be transferred through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Duke Nuclear is qualified to hold the operating authority under the licenses, and that the transfer of the operating authority under the licenses to Duke Nuclear is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated December 20, 2001.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80 and 10 CFR 72.50, it is hereby ordered that the transfer of operating authority under the licenses, as described herein, to Duke Nuclear is approved, subject to the following conditions:

(1) Duke Nuclear shall, prior to completion of the transfer of operating authority for Oconee, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Duke Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) After receipt of all required regulatory approvals of the transfer of operating authority to Duke Nuclear, DEC and Duke Nuclear shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 2 business days prior to the date of closing. If the transfer is not completed by December 31, 2002, this Order shall become null and void, provided however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject

transfer of operating authority are approved. The amendments shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated July 10, 2001, the supplemental letters dated October 31, November 1 and 26, and December 10, 2001, and the Safety Evaluation dated December 20 , 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*

Dated at Rockville, Maryland, this 20th day of December 2001.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–31925 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–413, Docket No. 50–414, License No. NPF–35, and License No. NPF–52]

Duke Energy Corporation, North Carolina Electric Membership Corporation, Saluda River Electric Cooperative, Inc., North Carolina Municipal Power Agency No. 1, Piedmont Municipal Power Agency, (Catawba Nuclear Station, Units 1 and 2); Order Approving Transfer of Operating Authority and Conforming Amendments

Duke Energy Corporation (Duke Energy, or DEC), the North Carolina Electric Membership Corporation, and the Saluda River Electric Cooperative, Inc. are the holders of Facility Operating License No. NPF–35, which authorizes operation of the Catawba Nuclear Station, Unit 1. DEC, the North Carolina Municipal Power Agency No. 1, and the Piedmont Municipal Power Agency are the holders of Facility Operating License No. NPF–52, which authorizes operation of the Catawba Nuclear Station, Unit 2. The Catawba Nuclear Station (Catawba or the facility) is located in York County, South Carolina.

By application dated July 10, 2001, as supplemented by letters dated October 31, November 1 and 26, and December 10, 2001, (collectively referred to herein as ''the application'' unless otherwise indicated), the Commission was informed that DEC, the sole licensed operator of both Catawba units, proposes to enter into an Operation and Maintenance Services Agreement with Duke Energy Nuclear, LLC (Duke Nuclear), and transfer operating authority under the licenses to Duke Nuclear. Under the proposed transaction, Duke Nuclear, which will be a wholly owned indirect subsidiary of DEC, will become a new licensee, exclusively authorized to operate Catawba in accordance with the terms and conditions of the licenses. The transaction involves no change in facility ownership, which is as follows: DEC owns 25%, the North Carolina Membership Corporation owns 56.25%, and the Saluda River Electric Cooperative owns 18.75% of Catawba Unit 1, and the North Carolina Municipal Power agency No. 1 owns 75% and Piedmont Municipal Power Agency owns 25% of Catawba Unit 2.[1]

DEC requested approval of the proposed transfer of operating authority under the Catawba licenses to Duke Nuclear pursuant to 10 CFR 50.80. The application also requested approval of conforming amendments pursuant to 10 CFR 50.90 to reflect the transfer. The proposed amendments would add Duke Nuclear to the licenses and reflect that Duke Nuclear is exclusively authorized to operate Catawba.

Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on September 25, 2001 (66 FR 49050). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Duke Nuclear is qualified to hold the operating authority under the licenses, and that the transfer of the operating authority under the licenses to Duke Nuclear is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated December 20, 2001.

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, it is hereby ordered that the transfer of operating authority under the licenses, as described herein, to Duke Nuclear is approved, subject to the following conditions:

(1) Duke Nuclear shall, prior to completion of the transfer of operating authority for Catawba, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Duke Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) After receipt of all required regulatory approvals of the transfer of operating authority to Duke Nuclear, DEC and Duke Nuclear shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 2 business days prior to the date of closing. If the transfer is not completed by December 31, 2002, this Order shall become null and void, provided however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as

[1] DEC does not have an ownership interest in Catawba Unit 2, but nonetheless is a holder of the Unit 2 license in connection with the operating authority granted to DEC under that license.

indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfer of operating authority are approved. The amendments shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated July 10, 2001, the supplemental letters dated October 31, November 1 and 26, and December 10, 2001, and the Safety Evaluation dated December 20, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.*

Dated at Rockville, Maryland, this 20th day of December, 2001.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31926 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–369, Docket No. 50–370, License No. NPF–9, and License No. NPF–17]

Duke Energy Corporation (McGuire Nuclear Station, Units 1 and 2); Order Approving Transfer of Operating Authority and Conforming Amendments

Duke Energy Corporation (Duke Energy, or DEC), is the holder of Facility Operating Licenses Nos. NPF–9 and NPF–17, which authorize operation of the McGuire Nuclear Station, Units 1 and 2 (McGuire or the facility). The McGuire Nuclear Station is located in Mecklenburg County, North Carolina.

By application dated July 10, 2001, as supplemented by letters dated October 31, November 1 and 26, and December 10, 2001, (collectively referred to herein as ''the application'' unless otherwise indicated), the Commission was informed that DEC, owner of the facility, proposes to enter into an Operation and Maintenance Services Agreement with Duke Energy Nuclear, LLC (Duke Nuclear), and transfer operating authority under the licenses to Duke Nuclear. Under the proposed transaction, Duke Nuclear, which will be a wholly owned indirect subsidiary of DEC, will become a new licensee, exclusively authorized to operate McGuire in accordance with the terms and conditions of the licenses. The transaction involves no change in facility ownership. Duke Nuclear will not own any portion of the facility.

DEC requested approval of the proposed transfer of operating authority under the McGuire licenses to Duke Nuclear pursuant to 10 CFR 50.80. The application also requested approval of conforming amendments pursuant to 10 CFR 50.90 to reflect the transfer. The proposed amendments would add Duke Nuclear to the licenses and reflect that Duke Nuclear is exclusively authorized to operate McGuire. Duke Nuclear will also become a general licensee for storage of spent fuel in certified dry casks at McGuire pursuant to 10 CFR 72.210.

Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on September 25, 2001 (66 FR 49048). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Duke Nuclear is qualified to hold the operating authority under the licenses, and that the transfer of the operating authority under the licenses to Duke Nuclear is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated December 20, 2001.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, it is hereby ordered that the transfer of operating authority under the licenses, as described herein, to Duke Nuclear is approved, subject to the following conditions:

(1) Duke Nuclear shall, prior to completion of the transfer of operating authority for McGuire, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Duke Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) After receipt of all required regulatory approvals of the transfer of operating authority to Duke Nuclear, DEC and Duke Nuclear shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 2 business days prior to the date of closing. If the transfer is not completed by December 31, 2002, this Order shall become null and void, provided however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfer of operating authority are approved. The amendments shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated July 10, 2001, the supplemental letters dated October 31, November 1 and 26, and December 10, 2001, and the Safety Evaluation dated December 20, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public

Electronic Reading Room on the Internet at the NRC Web site, http://www.nrc.gov/reading-rm/adams.html.

Dated at Rockville, Maryland, this 20th day of December 2001.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31927 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Exelon Generation Company, LLC, Limerick Generating Station, Units 1 and 2; Exemption

1.0 Background

Exelon Generation Company, LLC (Exelon or the licensee), is the holder of Facility Operating Licenses Nos. NPF–39 and NPF–85, which authorize operation of the Limerick Generating Station (LGS), Units 1 and 2. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two boiling-water reactors located at the licensee's site in Montgomery County, Pennsylvania.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, Appendix E, Section IV.F.2.b requires each licensee at each site to conduct an exercise of its onsite emergency plan every two years and indicates the exercise may be included in the full-participation biennial exercise required by paragraph 2.c. of the same section. In addition, licensees are to take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills. Paragraph 2.c. requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. Normally during such biennial full-participation exercises, the NRC evaluates onsite, and the Federal Emergency Management Agency (FEMA) evaluates offsite, emergency preparedness activities.

By letter dated October 16, 2001, Exelon requested an exemption from the requirements of 10 CFR part 50, Appendix E, Sections IV.F.2.c, regarding the conduct of a full-participation exercise at LGS. The exemption would allow the licensee to postpone the biennial full-participation exercise up to the end of 2002. However, the next full-participation exercise will continue to be scheduled biennially from 2001.

Exelon is among several licensees requesting exercise exemptions in the wake of the national emergency of September 11, 2001. It is recognized that it was not appropriate to conduct an exercise during the period of disruption and heightened security after the national emergency. The State of Pennsylvania was initially involved with the recovery response to the national emergency and continues to respond to heightened security needs. Considering the extraordinary circumstances, a schedular exemption is acceptable. However, in this period of heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the full-participation exercise as soon as practical to demonstrate and maintain readiness.

The licensee is faced with a difficult task to coordinate and schedule an exercise that involves multiple governmental agencies at the Federal, State, and local level. Many local response organizations depend on volunteers. In order to accommodate this task, the NRC has allowed licensees to schedule full-participation exercises at any time during the calendar biennium. This gives the licensee the flexibility to schedule the exercise within a 12– to 36–month window and still meet the biennial requirement specified in the regulations.

It should be noted that the licensee requested relief from 10 CFR part 50, appendix E, section IV.F.2.c. While the intent of the request is clear, the NRC staff determined that a schedular exemption from the onsite exercise requirements of 10 CFR part 50, appendix E, section IV.F.2. b, was also necessary. The following evaluation addresses the technical issues necessary to grant a schedular exemption from the requirements of 10 CFR part 50, appendix E, sections IV.F.2.b and c, to conduct an evaluated biennial exercise.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(v) special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

The licensee was scheduled to conduct a biennial full-participation exercise on November 1, 2001. The requested exemption is to postpone that exercise and conduct it during 2002. The interval between biennial exercises could be as long as 39 months, if the exercise were conducted in December of 2002. However, the licensee stated that the rescheduled exercise is expected to take place in the first or second quarter of 2002. If the licensee does conduct the exercise within the second quarter of 2002, the period between exercises would be about 33 months and within the normal parameters of exercise conduct, in which a period of 36 months is acceptable as long as the sequential exercises are conducted within the calender biennium. However, given that other 2001 exercises in NRC Region I will be rescheduled into 2002, the licensee may have difficulty finalizing the schedule by the end of the second quarter. To reschedule this exercise, the licensee will have to coordinate with local and State supporting agencies as well as NRC Region I and FEMA Region III. This effort will be complicated by the fact that NRC and FEMA will have to support the normally scheduled exercises in addition to the rescheduled exercises during 2002. Increased flexibility may be necessary for scheduling of Federal resources more so than local or utility resources. This being the case, a schedular exemption for conduct of the exercise within calendar year 2002 is appropriate, with the understanding that the licensee will conduct the exercise as soon as practicable.

LGS successfully conducted a full-participation exercise on September 14, 1999, which was evaluated by the NRC (Inspection Report No. 50–352;353/99–06) and FEMA (Final Exercise Report LGS 03/01/00.) The results of this exercise determined that the overall performance of the emergency response organization demonstrated that onsite emergency plans are adequate and that the organization is capable of implementing these plans. No violations of NRC requirements or exercise weaknesses were identified and the licensee stated that performance issues identified in the critique were entered into the corrective action process and addressed.

The licensee stated that subsequent to the September 14, 1999, full-

participation exercise, LGS conducted emergency response training drills on June 14, 2000, June 21, 2000, October 18, 2000, November 15, 2000, December 12, 2000, February 15, 2001, May 12, 2001, and June 20, 2001. A pre-exercise drill was also conducted on September 27, 2001. The licensee stated that there was at least partial offsite participation in the June 21, 2000, November 15, 2000, December 12, 2000, June 20, 2001, and September 27, 2001, drills. In addition, emergency response training drills involving control room staff were conducted on January 20, 2000, January 27, 2000, February 3, 2000, February 10, 2000, February 17, 2000, January 12, 2001, January 19, 2001, January 26, 2001, February 2, 2001, and February 9, 2001. The licensee stated that these drills satisfy the drill requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.b. The licensee stated that drill critiques verified that the emergency plan and its implementing procedures were successfully implemented. Issues identified during these drills, exercises, and associated critiques are being resolved under the station's corrective action program.

The licensee stated that compensating measures will be taken to maintain emergency preparedness at LGS until the postponed exercise is conducted. The existing training and drill schedule currently in place for emergency response activities will remain in place and be adjusted as necessary to ensure the readiness of both onsite and offsite emergency response personnel. This includes annual training, requalification, and participation drills for onsite emergency responders. The licensee stated that these measures will be implemented to maintain an acceptable level of emergency preparedness during this period.

The Pennsylvania Emergency Management Agency (PEMA) has requested that FEMA postpone the exercise into 2002. The licensee and PEMA stated that offsite local, State, and Federal government agencies that are required to participate in the LGS biennial exercise are directly participating in the response, recovery, and other continuing activities associated with the September 11, 2001, national emergency.

The staff examined the licensee's rationale to support the exemption request and concluded that granting the exemption would provide only temporary relief from the applicable regulation and that the licensee had made a good faith effort to comply with the regulation. The national emergency of September 11, 2001, and the subsequent recovery and security responses required that State and local resources expected to be available for the previously scheduled biennial exercise be applied to agency missions. Offsite agencies were not able to dedicate the appropriate level of resources, as it would divert public agency resources from the national emergency recovery efforts. Additionally, the licensee's drill program includes offsite agency participation and is a compensating measure contributing to the justification of the exemption.

The exemption only provides temporary relief from the applicable regulation, in that the licensee has committed to conduct the exercise during the next calendar year (2002) and has not requested any permanent changes in future exercise scheduling. The licensee made a good faith effort to conduct the exercise and comply with regulations. The circumstances dictating the request for exemption are beyond the licensee's control. The regulations of this part do allow for the postponement of exercises and the regulations have been invoked for appropriate circumstances. This being the case, the occasional need to postpone exercises was considered as a potential circumstance. The staff has determined that conduct of the full-participation exercise as early as practical in 2002 is prudent even though the licensee is expected to conduct another full-participation exercise in 2003.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present pursuant to 10 CFR 50.12(a)(2)(v), in that the exemption would only provide temporary relief from the applicable regulations, and the licensee has made a good faith effort to comply with the regulation. Therefore, the Commission hereby grants Exelon a one-time schedular exemption from the requirements to conduct an exercise of its onsite and offsite (with full-participation by each offsite authority having a role under the plan) emergency plans every 2 years as required by 10 CFR part 50, appendix E, sections IV.F.2.b and c. This conclusion is based on the licensee's commitment to conduct the postponed exercise in 2002. The staff notes that the licensee expects to conduct the exercise in the first or second quarter of 2002. The staff recommends that the licensee schedule the exercise as early as practical in 2002, but the exemption is not predicated on the licensee following this recommendation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 65231).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of December 2001.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31928 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

The UNPLUG Salem Campaign, the National Whistleblower Center and Mr. Randy Robarge Riverkeeper, Inc., et al.; Receipt of Requests for Action Under 10 CFR 2.206

Notice is hereby given that by the following three petitions, the Nuclear Regulatory Commission (NRC) was requested to take immediate corrective actions to protect the public against the possibility of terrorists seizing control of a large commercial jetliner and crashing into a nuclear power plant in the United States.

1. From Mr. Norm Cohen, on behalf of the UNPLUG Salem Campaign, dated September 17, 2001.

2. From Mr. Michael D. Kohn, on behalf of the National Whistleblower Center and Randy Robarge, dated October 24, 2001.

3. From Messrs. Alex Matthiessen, and Karl Coplan, on behalf of the Riverkeeper, Inc., et al, dated November 8, 2001.

The petitioners requested that the NRC staff take certain specified compensatory measures, to protect the public and environment from the catastrophic impact of a terrorist attack on a nuclear power plant or a spent fuel pool.

These requests are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. These requests have been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on these petitions within a reasonable time.

Since the subject of these petitions involves safeguards matters, the NRC

has decided not to make the petitions public or publicly discuss the petitions to avoid disclosure of potentially sensitive security information.

Dated at Rockville, Maryland, this 20th day of December 2001.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31930 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22–ISFSI, ASLBP No. 97–732–02–ISFSI]

Private Fuel Storage, L.L.C.; Notice of Reconstitution

Pursuant to 10 C.F.R. 2.721, the Atomic Safety and Licensing Board in the above captioned *Private Fuel Storage, L.L.C.* proceeding is hereby reconstituted by appointing a Licensing Board consisting of Administrative Judge Michael C. Farrar, Chairman; Administrative Judge Jerry R. Kline; and Administrative Judge Peter Lam, which shall have jurisdiction over all pending and future matters in this proceeding,[1] with the exception of those matters relating to contention Utah E/Confederated Tribes F, Financial Assurance, contention Utah S, Decommissioning, and/or contention Security-J, Law Enforcement. With respect to pending or future matters regarding contention Utah E/Confederated Tribes F, contention Utah S, and/or contention Security-J, the Licensing Board consisting of Administrative Judge G. Paul Bollwerk, III, Chairman, and Administrative Judges Kline and Lam will retain jurisdiction for all purposes.

In accordance with 10 C.F.R. 2.701, all correspondence, documents, and other material relating to any matter in this proceeding should continue to be served on Judges Kline and Lam. All correspondence, documents and, other material relating to any matter other than contention Utah E/Confederated Tribes F, contention Utah S, and/or contention Security-J shall be served on Administrative Judge Farrar as follows: Administrative Judge Michael C. Farrar, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hereafter, only correspondence, documents, and other material relating to any matter concerning contention Utah E/Confederated Tribes F, contention Utah S, and/or contention Security-J should continue to be served on Administrative Judge Bollwerk.

Issued at Rockville, Maryland, this nineteenth day of December 2001.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 01–31922 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

[1] At the request of the Licensing Board chaired by Judge Bollwerk, Judge Farrar has been reviewing pending matters in this proceeding in conjunction with Judges Kline and Lam. The Licensing Board of which Judge Farrar is Chairman anticipates issuing a number of rulings on pending matters in the near future.

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment four draft guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guides all pertain to licensees' use of Code Cases of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, and the guides are being developed to provide updated guidance on the use of Code Cases. Code Cases provide alternatives that have been developed and approved by ASME or they explain the intent of existing Code requirements. The proposed Revision 32 of combined Regulatory Guides 1.84 and 1.85, temporarily identified by its task number, DG–1090 (which should be mentioned in all correspondence concerning this draft guide), is ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III.'' This draft guide provides guidance that is acceptable to the NRC staff for licensees on the use of ASME Section III Code Cases.

Draft Regulatory Guide DG–1091, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' is the proposed Revision 13 of Regulatory Guide 1.147, which provides guidance that is acceptable to the NRC staff for licensees on the use of ASME Section XI Code Cases.

Draft Regulatory Guide DG–1089, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' is being developed to provide guidance that is acceptable to the NRC staff for licensees on the use of ASME OM Code Cases.

Draft Regulatory Guide DG–1112, ''ASME Code Cases Not Approved for Use,'' is being developed to provide guidance to licensees on the ASME Code Cases that have not been approved by the NRC. The reasons the Code Cases were not approved are also stated.

These draft guides have not received complete staff approval and do not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by March 25, 2002.

Comments may also be provided via the NRC's interactive rulemaking web site through the NRC homepage (*http://www.nrc.gov*). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guides, contact Mr. W.E. Norris at (301) 415–6796; e-mail WEN@NRC.GOV.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *PDR@NRC>GOV*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 12th day of December 2001.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 01–31929 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–37

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. Form RI 25–37, Evidence to Prove Dependency of a Child, is designed to collect sufficient information for OPM to determine whether the surviving child of a deceased Federal employee is eligible to receive benefits as a dependent child.

Approximately 250 forms are completed annually. We estimate it takes approximately 60 minutes to assemble the needed documentation. The annual burden is 250 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utililty; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please include a mailing address with you request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01–31900 Filed 12–27–01; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 10, 2002,
Thursday, January 24, 2002, and
Thursday, February 7, 2002.

The meetings will start at 10:00 a.m. and will be held in Room 5H09, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for blue-collar Federal employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, of title 5, United States Code, as amended, and from time to time advise the Office of Personnel Management. The scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Public Law 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and recommendations made. These reports are available to the public upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street NW., Washington, DC 20415, (202) 606–1500.

Dated: December 14, 2001.

Mary M. Rose,

Chair, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 01–31902 Filed 12–27–01; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25321; 812–12472]

Robert W. Baird & Co. Incorporated; Notice of Application

December 19, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for permanent order of exemption under the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF THE APPLICATION: Applicant seeks an order (''Amended Order'') that would amend a prior permanent order that exempts it from the provisions of section 9(a) of the Act to relieve it from any ineligibility resulting from applicant's employment of an individual who is subject to a securities-related injunction (''Prior Order'').[1]

FILING DATES: The application was filed on March 13, 2001 and amended on December 17, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

[1] Robert W. Baird & Co. Incorporated, Investment Company Act Release No. 18457 (Dec. 24, 1991) (permanent order); *see also* Robert W. Baird & Co. Incorporated, Investment Company Act Release No. 18424 (Nov. 27, 1991) (temporary order and notice of application for permanent order).

issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 14, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, 777 East Wisconsin Avenue, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Robert W. Baird & Co. Incorporated (''Baird'') is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and an investment adviser registered under the Investment Advisers Act of 1940. Baird is an indirect majority-owned subsidiary of the Northwestern Mutual Life Insurance Company and acts as investment adviser, subadviser, depositor or principal underwriter to a number of registered investment companies.

2. On December 24, 1991, the Commission issued the Prior Order under section 9(c) of the Act granting Baird an exemption from section 9(a) of the Act to permit Baird to continue to serve or act in certain capacities for registered investment companies while employing George J. Gaspar, who is subject to a disqualification under section 9(a) of the Act. In 1985, Mr. Gaspar was permanently enjoined (the ''1985 Injunction'') from future violations of certain federal securities laws.[2]

3. Baird currently employs Mr. Gaspar as a managing director of petroleum research. Mr. Gaspar's responsibilities include the publication of a newsletter reporting on the oil and gas industry and supervising a team of research analysts in the preparation of that newsletter and investment research reports on energy-related companies. Mr. Gaspar has no other direct supervisory or management responsibilities. In addition, at various times between 1981 and 1996, Mr. Gaspar served as a member of Baird's board of directors.[3]

4. The Amended Order would amend the Prior Order by modifying certain conditions to remove certain requirements that apply to a number of other Baird employees (the ''Other Baird Personnel''). The Other Baird Personnel include portfolio managers, Baird employees working under Mr. Gaspar's supervision, and all senior employees of Baird and any investment companies for which Baird acts as investment adviser or subadviser.

Applicant's Legal Analysis

1. Section 9(a)(2) of the Act, in pertinent part, disqualifies any person from acting in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company, if such person is, by reason of any misconduct, permanently or temporarily enjoined from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person or employee of an investment company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security. A company with an employee or other affiliated person ineligible to serve in any of these capacities under section 9(a)(2) is similarly ineligible by reason of section 9(a)(3) of the Act. As a result of the 1985 Injunction, Mr. Gaspar is subject to this bar, as is Baird, his employer.

2. Section 9(c) of the Act provides that, upon application, the Commission shall grant an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to an applicant, are unduly or disproportionately severe or that the conduct of such person has been such that it would not be against the public interest or protection of investors to grant such application.

3. Applicant believes that the requested relief satisfies the standard for relief in section 9(c). The requested amendments to the Prior Order would remove notice and certification requirements with respect to the Other Baird Personnel that currently impose a significant administrative burden on Baird. Applicant believes that it would not be against the public interest or protection of investors to remove these requirements. Applicant states that since the entry of the 1985 Injunction, Mr. Gaspar has not been subject to or involved in any disciplinary matters. In addition, applicant states that it has significantly expanded its legal and compliance activities, which reduces the likelihood of any activity that could give rise to a section 9 disqualification. Applicant believes that these factors demonstrate that it would not be against the public interest or the protection of investors to grant the Amended Order.

Applicant's Conditions

Applicant agrees that any order amending the Prior Order will be subject to the following conditions:

1. Mr. Gaspar will not be involved in Baird's business of serving as investment adviser, subadviser, depositor, or principal underwriter to registered investment companies. Applicant will develop procedures designed reasonably to assure compliance with this condition.

2. Baird has taken the necessary steps to confirm that no other employee is subject to a statutory disqualification.

3. Baird's general counsel has attested that he has reviewed Baird's compliance procedures designed to screen for and detect statutory disqualifications, reasonably believes such compliance

[2] *See* Securities & Exchange Commission v. George J. Gaspar & Eugene L. Hall, 1985 U.S. Dist. LEXIS 20698, Fed. Sec. L. Rep. (CCH) 92,004 (Apr. 16, 1985). The court found that Mr. Gaspar had violated sections 10(b) and 14(e) of the Exchange Act and rule 10b-5 thereunder and permanently enjoined him from future violations of these provisions. The alleged misconduct involved the communication of certain material, nonpublic information relating to the proposed acquisition of Clark Oil and Refining Corporation by a private placement organization.

[3] Currently, Baird does not expect that Mr. Gaspar will be attending any board meetings in any capacity. However, in the event that Mr. Gaspar rejoins the board of directors or attends meetings of the board of directors in another capacity, Baird will abide by the following procedures, which would replace conditions 6 and 7 to the Prior Order:

a. Mr. Gaspar will not attend meetings of Baird's board of directors where the operations of any registered investment company for which Baird acts as investment adviser, subadviser, depositor, or principal underwriter are on the agenda.

b. Mr. Gaspar will be excused from all meetings of Baird's board of directors where the operations of any registered investment company for which Baird acts as investment adviser, subadviser, depositor, or principal underwriter are proposed to be discussed prior to any such discussion.

procedures have been fully implemented, and that such procedures are reasonable and appropriate to prevent persons subject to a statutory disqualification from becoming affiliated with Baird in the future.

4. Baird's general counsel or chief executive officer will certify on an annual basis that Baird and Mr. Gaspar have complied with the conditions to the requested order.

5. The certifications and procedures required by the conditions to the requested order will be maintained as part of the records of Baird and will be available for inspection by the Commission and its staff at any reasonable time.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31915 Filed 12–27–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25323; 812–12348]

AXA Premier Funds Trust, et al.; Notice of Application

December 20, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application under: (a) Section 6(c) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act; (b) sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between a broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer which is an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3–1 under the Act.

APPLICANTS: AXA Premier Funds Trust, AXA Premier VIP Trust, EQ Advisors Trust (collectively, the ''Trusts'') and The Equitable Life Assurance Society of the United States (''Equitable'' or the ''Manager'').

FILING DATES: The application was filed on December 6, 2000, and amended on December 19, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 15, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 1290 Avenue of the Americas, New York, NY 10104.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts, each a Delaware business trust, are registered under the Act as open-end management investment companies and are comprised of multiple series (each series of the Trusts, a ''Fund''). Shares of the Funds of EQ Advisors Trust and AXA Premier VIP Trust are only offered for sale to insurance companies to fund variable insurance products and employee investment plans.

2. The Manager is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each of the Funds. The assets of certain Funds (''Multi-Advised Funds'') are allocated by the Manager among two or more subadvisers (''Subadvisers''). Each Subadviser is registered under the Advisers Act or is exempt from registration. Each Subadviser has discretion to purchase and sell securities for a discrete portion of a Multi-Advised Fund's assets. The Manager pays each Subadviser a fee out of the advisory fee received by the Manager from the Multi-Advised Fund. Equitable or a Subadviser controlling, controlled by, or under common control with Equitable (an ''Equitable Affiliate'') may directly advise a discrete portion of a Multi-Advised Fund.

3. Applicants request relief to permit: (a) A broker-dealer registered under the Securities Exchange Act of 1934 that serves as a Subadviser or is an affiliated person of a Subadviser (the broker-dealer, an ''Affiliated broker-Dealer'' the Subadivser, and ''Affiliated Subadviser'') to engage in principal transactions with a discrete portion of a Multi-Advised Fund that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Subadviser (the discrete portion, an ''Unaffiliated Portion,'' the Subadviser, and ''Unaffiliated Subadviser''); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to utilize such brokerage services, without complying with rule 17e–1(b) and (d) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser, or a person of which an Affiliated Subadviser is an affiliated person (''Affiliated Underwriter''); (d) a discrete portion of the Multi-Advised Fund advised by an Affiliated Subadviser (''Affiliated Portion'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion; and (e) an Unaffiliated Portion to purchase securities issued by an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser, that is involved in securities-related activities

(''Securities Affiliate''), subject to the limits in rule 12d3–1 under the Act.[1]

4. Applicants request that the exemptive relief apply to the Trusts and any existing or future registered open-end management investment company or series thereof that is (a) advised by Equitable or an Equitable Affiliate and (b) advised by more than one Subadviser. The relief also would apply to any existing or future entity that serves as an Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter to a Multi-Advised Fund. Any investment company that currently intends to rely on the order is named as an applicant. Any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

Applicants' Legal Analysis

A. Principal Transactions Between an Unaffiliated Portion and an Affiliated Broker-Dealer

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promotor of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter (''second-tier affiliate''). Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Multi-Advised Fund, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus a second-tier affiliate of a Multi-Advised Fund, including the Unaffiliated Portion. Accordingly, applicants state that any principal transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Multi-Advised Fund with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion soley because an Affiliated Subadviser is the Subadviser to another discrete portion of the same Multi-Advised Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of (a) Equitable; (b) the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Multi-Advised Fund; (c) any principal underwriter or promoter of the Multi-Advised Fund; or (d) any officer, trustee or employee of the Multi-Advised Fund.

3. Section 17(b) of the Act authorizes the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Portion would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further submit that the Manager's power to dismiss Subadvisers or to change the portion of a Multi-Advised Fund allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of its discrete portion of a Multi-Advised Fund.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of a Multi-Advised Fund. Each Subadviser is responsible for making independent investment and brokerage allocation decisions. Applicants represent that the Manager will not dictate brokerage allocation or investment decisions to any Multi-Advised Fund advised by a Subadviser nor will it have the contractual right to do so, except with respect to any portion of a Multi-Advised Fund that the Manager may advise directly. Applicants contend that, in managing a discrete portion of a Multi-Advised Fund, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Multi-Advised Fund, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and related investment policies of the Multi-Advised Fund as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Multi-Advised Fund achieving best price and execution on its principal transactions, while giving rise to none of the abuses that section 17(a) was designed to prevent.

B. Payment of Brokerage Compensation by an Unaffiliated Portion to an Affiliated Broker-Dealer

1. Section 17(d)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's

[1] The terms ''Unaffiliated Subadviser,'' ''Subadviser'' and ''Unaffiliated Portion'' include Equitable or an Equitable Affiliate and the discrete portion of a Multi-Advised Fund directly advised by Equitable or an Equitable Affiliate, respectively, provided that Equitable or the Equitable Affiliate manages its portion of the Multi-Advised Fund independently of the portions managed by the other Subdvisers to the Multi-Advised Fund, and Equitable or the Equitable Affiliate does not control or influence any other Subadviser's investment decisions for its portion of the Multi-Advised Fund. [FN3, p.6]

commission'' for purposes of section 17(d)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule compiled with the procedures. Rule 17e–1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another discrete portion of a Multi-Advised Fund) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e–1 to the extent necessary to permit an Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Portion, without complying with the requirements of rule 17e–1(b) and (d). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another discrete portion of the same Multi-Advised Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of (a) Equitable; (b) the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Multi-Advised Fund; (c) any principal underwriter or promoter of the Multi-Advised Fund; or (d) any officer, trustee or employee of the Multi-Advised Fund.

3. Applicants believe that the proposal brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e–1(a). Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser or employee of the company, or an affiliated person of any of these persons. Section 10(f) also provides that the SEC may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securites.

2. Applicants state that each Subadviser, although under contract to manage only a discrete portion of a Multi-Advised Fund, is considered an investment adviser to the entire Multi-Advised Fund. As a result, applicants believe that all purchases of securities by an Unaffiliated Portion from an underwriting syndicate a principle underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Multi-Advised Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of (a) Equitable; (b) the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Multi-Advised Fund; (c) any principal underwriter or promoter to the Multi-Advised Fund; or (d) any officer, trustee or employee of the Multi-Advised Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Advised Funds because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

D. Purchases of Securities Issued by Securities Affiliates

1. Section 12(d)(3) of the Act, in relevant part, generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, ''securities-related activities''). Rule 12d3–1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if specified conditions are met. One of these conditions, paragraph (c) of rule 12d3–1, generally provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment company's investment adviser, promoter, or principal underwriter.

2. Applicants state that each Subadviser is considered to be an affiliated person of an entire Multi-Advised Fund. Thus, an Unaffiliated Portion may not purchase securities of a Securities Affiliate in reliance on rule 12d3–1 because of paragraph (c). Applicants request relief under section 6(c) from section 12(d)(3) to permit an Unaffiliated Portion of a Multi-Advised

Fund to acquire securities of a Securities Affiliate within the limits of rule 12d3–1. The requested exemption would apply only where a Securities Affiliate is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion within the meaning of Rule 12d3–1(c) solely because an Affiliated Adviser is the Adviser to another portion of the same Multi-Advised Fund.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Multi-Advised Fund. Further, applicants submit that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of a Fund's shareholders by preventing the Unaffiliated Subadviser from achieving optimal investment results.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Advised Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Securities Affiliate or Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Multi-Advised Fund) will be an affiliated person or a second-tier affiliate of: (a) Equitable or any Equitable Affiliate; (b) any Unaffiliated Subadviser; (c) any principal underwriter or promoter of a Multi-Advised Fund; or (d) any officer, trustee or employee of a Multi-Advised Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Adviser or an affiliated person of an Affiliated Adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31916 Filed 12–27–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934, Release No. 45179/December 20, 2001]

Secutities Industry Association 1401 Eye Street, NW., Washington, DC 20005–2225; Order Extending Broker-Dealer Exemption From Sending Financial Information to Customers

The Securities and Exchange Commission (''Commission'') is extending its temporary Order issued December 10, 1999[1] under Section 17(e) of the Securities Exchange Act of 1934 (''Exchange Act'') exempting broker-dealers from Exchange Act Section 17(e)(1)(B) and Rule 17a–5(c). These sections require a broker-dealer to send each of its customers semi-annually its balance sheet with appropriate footnotes prepared in accordance with generally accepted accounting principles (''GAAP'') and a footnote disclosing the firm's net capital and required net capital. To take advantage of the exemption, a broker-dealer must semi-annually send the net capital footnote to its customers, must send its balance sheet and appropriate footnotes to customers upon request via a toll-free number, and must place its balance sheet and appropriate footnotes on its Web site.

The Commission's temporary Order established a pilot program which expires on December 31, 2001. During the pilot program, a broker-dealer taking advantage of the exemption was required, among other things, to report to the Commission the number of times its balance sheet was viewed on its Web site and the number of requests for paper copies received via its toll-free number. In a letter dated December 11, 2001, the Securities Industry Association (''SIA'') stated that it supported an extension of the exemption.

The Commission has determined, on the basis of information set forth in the SIA's letter and information reported by broker-dealers taking advantage of the exemption, that extending the exemption for one year is consistent with the public interest and the protection of investors. The Commission intends to propose a rule amendment shortly which would make the relief permanent.

A broker-dealer exempted under this Order must comply with each of the following requirements:

(1) The broker-dealer semi-annually sends its customers, at the times it otherwise would have sent its customers its balance sheet in accordance with Rule 17a–5(c), a statement which includes: (a) The amount of the broker-dealer's net capital and its required net capital in accordance with Rule 15c3–1, (b) to the extent required under Rule 17a–5(c)(2)(ii), a description of the effect on the broker-dealer's net capital and required net capital of subsidiaries consolidated pursuant to Appendix C of Rule 15c3–1 (jointly the ''Net Capital Disclosure''), and (c) any statements otherwise required by Rule 17a–5(c)(2)(iii)–(iv).[2]

(2) The above statement is given prominence in the materials sent to its customers and includes an appropriate caption stating that customers may obtain the broker-dealer's balance sheet (in the case of the annual balance sheet, audited and with the auditor's certification) at no cost, by accessing the broker-dealer's Web site or calling the broker-dealer's stated toll-free number. The statement must provide the specific Internet Universal Research Locator (URL) at which the broker-dealer's balance sheet is located.

(3) The broker-dealer publishes a balance sheet prepared in accordance with GAAP, including footnotes and the Net Capital Disclosure, accessible through each of the following Internet locations:

(a) The broker-dealer's Website homepage, containing a hyperlink providing a direct link to the broker-dealer's balance sheet;

(b) Each page at which a customer can log-on to the broker-dealer's Website, containing a hyperlink providing a

[1] Exchange Act Release No. 42222.

[2] A broker-dealer may comply with this requirement by: (a) delivering the statements to its customers in paper copy form or (b) transmitting the statements to its customers electronically.

direct link to the broker-dealer's balance sheet; and

(c) If the Websites for two or more broker-dealers can be accessed from the same home page, a hyperlink directing the Internet user to the home page of each broker-dealer. Upon reaching the broker-dealer's home page, the home page contains a hyperlink providing a direct link to the particular broker-dealer's balance sheet.

Each of the above hyperlinks is placed on the broker-dealer's Website, in either textual or button format, as a separate, prominent link, in a manner that is clearly visible.[3]

(4) The broker-dealer maintains a toll-free number that customers can call to request a paper or electronic copy of its balance sheet.

(5) If a customer requests a paper or electronic copy of the broker-dealer's balance sheet, the firm sends it promptly at no cost to the customer.

(6) If the broker-dealer's net capital falls below the early warning levels of Rule 17a–11 and the broker-dealer fails to cure the relevant deficiency within 24 hours, or if the broker-dealer's auditors determine that a material inadequacy exists with regard to any of the financial disclosures contained in the audited financial statements or in the broker-dealer's internal controls, the firm returns to sending its balance sheet as required under Rule 17a–5(c), including footnotes, by the next date that financial disclosures are required, until the deficiency or material inadequacy is cured.

(7) The broker-dealer submits to the Commission, addressed to Division of Market Regulation, United States Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001, no later than 60 days after each distribution of its published statement containing the Net Capital Disclosure:

(a) A report on the number of requests that the broker-dealer has received for copies of its balance sheet via its toll-free number and the number of times its balance sheet has been viewed on its Website. The report contains the number of requests received in the month following its Website publishing of its recent balance sheet and, except in the case of the first Website publishing, in the preceding six months; and

(b) Written investor complaints regarding the exemption received by the broker-dealer in the preceding six months.

Accordingly,

It is ordered, under Exchange Act Section 17(e)(1)(C) and Rule 17a–5(l)(3), that the exemption from Exchange Act Section 17(e)(1)(B) and Rule 17a–5(c) granted in Exchange Act Release No. 42222 is extended to December 31, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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[3] This Order exempts certain firms from the delivery requirement under Rule 17a–5(c), in part, based on the protections afforded by the Commission's financial responsibility rules. The condition that a broker-dealer makes its balance sheet available on its Website is not an alternative method of delivering this information to customers under Rule 17a–5(c).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45174; File No. SR–MSRB–2001–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations

December 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4 thereunder,[1] notice is hereby given that on October 16, 2001, Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MSRB–2001–07) (the ''proposed rule change'') described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing a proposed rule change concerning minimum denominations consisting of an amendment to its rule G–15, on confirmation, clearance and settlement of transactions with customers, an amendment to its rule G–8, on books and records to be made by brokers, dealers and municipal securities dealers, and an interpretation of its rule G–17, on conduct of municipal securities activities.

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

The text of the proposed rule change follows.[2]

G–15 Confirmation, Clearance, [and] Settlement [of] *and Other Uniform Practice Requirements with Respect to* Transactions with Customers

(a) through (e) No change.

(f) *Minimum Denominations*

(i) *Except as provided in this section (f), a broker, dealer or municipal securities dealer shall not effect a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue.*

(ii) *The prohibition in subsection (f)(i) of this rule shall not apply to the purchase of securities from a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the customer's position in the issue already is below the minimum denomination and that the entire position would be liquidated by the transaction. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely either upon customer account information in its possession or upon a written statement by the customer as to its position in an issue.*

(iii) *The prohibition in subsection (f)(i) of this rule shall not apply to the sale of securities to a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the securities position being sold is the result of a customer liquidating a position below the minimum denomination, as described in subsection (f)(ii) of this rule. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely upon customer account records in its possession or upon a written statement provided by the party from which the securities are purchased. A broker, dealer or municipal securities dealer effecting a sale to a customer under this subsection (iii) shall at or before the completion of the transaction, give or send to the customer a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. Such written statement may be included on the customer's confirmation or may be*

[2] Italics indicates additions; brackets denote deletions.

provided on a document separate from the confirmation.

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Required to be Made

(i) through (viii) No change.

(ix) Copies of Confirmation, Periodic Statements and Certain Other Notices to Customers. A copy of all confirmation of purchase or sale of municipal securities, of all periodic written statements disclosing purchases, sales or redemptions of municipal fund securities pursuant to rule G–15(a)((viii), *of written disclosures to customers, if any, as required under rule G–15(f)(iii)* and, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, of all other notices sent to customers concerning debits and credits to customer accounts, or, in the case of a bank dealer, notices of debts and credits for municipal securities, cash and other items with respect to transactions in municipal securities.

Rule G–17. Conduct of Municipal Securities Activities

Notice of Interpretation of Rule G–17 Concerning Minimum Denominations

Muncipal securities issuers sometimes set a relatively high minimum denomination, typically $100,000, for certain issues. This may be done so that the issue can qualify for one of several exemptions from Securities Exchange Act Rule 15c2–12, meaning that the issue would not be subject to certain primary market or continuing disclosure requirements. In other situations, issuers may set a high minimum denomination even though the issue is subject to Securities Exchange Act Rule 15c2–12. This may be because of the issuer's (or the underwriter's) belief that the securities are not an appropriate investment for those retail investors who would be likely to purchase securities in relatively small amounts.

Several issuers have expressed concern to the MSRB upon discovering that their issuers with high minimum denotations were trading in the secondary market in transaction amount much lower than the stated minimum denomination.[1] Based on information obtained from the MSRB Transactions Reporting Program, it appears that there are significant numbers of these types of transactions. In the past, brokers, dealers and municipal securities dealers (collectively ''dealers'') effecting such transactions likely would have had the problem brought to their attention when attempting to make delivery of a certificate to the customer. This is because the transfer agent would not have been able to honor a request for a certificate with a par value below the minimum denomination. Today, however, increased use of book-entry deliveries and safekeeping arrangements for retail customers largely preclude the need for individual certificates for customers and there is no other systemic screening to identify transactions that are in below-minimum denomination amounts.

Rule G–17 states: ''In the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.'' The MSRB has interpreted this rule to mean, among other things, that dealers are required to disclose, at or before a transaction in municipal securities with a customer, all material facts concerning the transaction, including a compete description of the security. The MSRB has proposed an amendment to rule G–15 that would prohibit transactions in below-minimum denomination amounts for municipal securities issued after June 1, 2002, with certain limited exceptions.[2] The MSRB anticipates that some transaction in below-minimum denomination amounts may continue to occur for issues prior to June 1, 2002, as well as under the limited exception to the proposed amendment to rule G–15.[3] In either case, the MSRB believes that any time a dealer is selling to a customer a quantity of municipal securities below the minimum denomination for the issue, the dealer should consider this to be a material fact about the transaction. The MSRB believes that a dealers's failure to disclose such a material fact to the customer, and to explain how this could affect the liquidity of the customer's position, generally would constitute a violation of the dealer's duty under rule G–17 to disclose all material facts about the transaction to the customer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Official documents for municipal securities issues sometimes state a ''minimum denomination'' larger than the normal $5,000 par value. An issuer may state a high minimum denomination (typically $100,000) to qualify for one of several exemptions from Exchange Act Rule 15c2–12, the rule designed to ensure production of certain disclosure documents in the primary and secondary markets. Aside from this rule, an issuer may also sometimes set high minimum denominations for issues because of a concern that the securities may not be appropriate for those retail investors who would be likely to purchase securities in relatively small amounts.

Several issuers have expressed concern to the MSRB upon discovering that their issues with high minimum denominations were trading in the secondary market in transaction amounts much lower than the stated minimum denomination. Based on information obtained from the MSRB Transaction Reporting Program, it appears that there are significant numbers of these types of transactions. In the past, brokers, dealers and municipal securities dealers (collectively ''dealers'') effecting such transactions likely would have had the problem brought to their attention when attempting to make delivery of a certificate to the customer. This is because the transfer agent would not have been able to honor a request for a

[1] *Occasionally, bond documents may state a minimum transaction amount that applies only to primary market transactions, but with a clear indication by the issuer that transactions may occur at lower amounts in the secondary market. The MSRB is not aware of non-authorized transaction amounts occurring for issuers of these types. In general, however, bond documents describing a minimum ''denomination'' would appear to the intended to apply to both primary and secondary market transactions.*

[2] *Proposed rule change SR–MSRB–2001–07, filed with the Securities and Exchange Commission on October 16, 2001.*

[3] Even for municipal securities issued after June 1, 2002, below-minimum denomination transactions may need to be effected in compliance with proposed MSRB rule G–15(f) to liquidate below-minimum denomination positions created through the exercise of a will, division of a martial estate, as a result of an investor giving a portion of a position as a gift, etc. In addition, the exercise of a sinking fund or other partial redemption by an issuer can sometimes result in customers holding below-minimum denomination amounts.

certificate with a par value below the minimum denomination. Today, however, increased use of book-entry deliveries and safekeeping arrangements for retail customers largely preclude the need for individual certificates for customers and there is no other systemic screening to identify transactions that are in below-minimum denomination amounts. However, since municipal securities today predominantly stay in a book-entry environment, with ownership recorded on the books and records of depositories and other nominees, a restriction on the par value of certificates does not effectively restrict the size of transactions.

The purpose of the proposed rule change is to help ensure that dealers observe the minimum denominations stated in the official documents of municipal securities issues. As discussed below, the MSRB received nine comments from issuer and dealer organizations urging that any prohibition on below-minimum denomination trading be prospective in its application with respect to currently outstanding versus future issues of municipal securities. The MSRB agrees that it is appropriate for the rule to be prospective in this manner so that issuers, dealers and other market participants will be aware of the secondary market implications of high minimum denominations at the time the decision is made to incorporate them into an issue's terms. Accordingly, the proposed rule change includes an amendment to MSRB rule G–15 that, for securities issued after June 1, 2002, would prohibit transactions in below-minimum denomination amounts, with two limited exceptions.

The general prohibition of the rule G–15 amendment is designed to prevent dealers from effecting transactions that break up securities positions into amounts below the issue's denomination. The two exceptions in the amendment to rule G–15 are designed to help preserve liquidity of customer's below-minimum denomination positions that may occur through actions other than a dealer effecting transactions in below-minimum denomination amounts.[3] First, a dealer may purchase a below-minimum denomination position from a customer provided that the customer liquidates his/her entire position. Second, a dealer may sell such a liquidated position to another customer but would be required to provide written disclosure, either on the confirmation or separately, to the effect that the security position is below the minimum denomination and that liquidity may be adversely affected by this fact.

Under MSRB rule G–8, on books and records, customer confirmations must be kept for three years in a dealer's books and records. To ensure consistency in the recordkeeping requirements for separate written disclosures given to a customer under the rule G–15 amendment and the recordkeeping requirements for customer confirmations, the proposed rule change includes an amendment to rule G–8 that would require dealers to keep a record of these separate written disclosures for a minimum of three years.

Although certain written disclosures would be required, after the trade, for those transactions done under the second exemption to the rule G–15 amendment, the MSRB also seeks to address a more general need for time-of-trade disclosure in the proposed rule change. Rule G–17 states: ''In the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.'' The MSRB has interpreted this rule to mean, among other things, that dealers are required to disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security. The proposed rule change includes an interpretation of rule G–17 stating that any time a dealer is selling to a customer a quantity of municipal securities below the minimum denomination for the issue, the dealer should consider this to be a material fact about the transaction. The MSRB believes that a dealer's failure to disclose such a material fact to the customer, and to explain how this could affect the liquidity of the customer's position, generally would constitute a violation of the dealer's duty under rule G–17 to disclose all material facts about the transaction of the customer.

While the rule G–15 amendment applies only to municipal securities issued after June 1, 2002, the interpretation of rule G–17 applies to all transactions in municipal securities regardless of the date of issuance of the security traded. This helps ensure that all future investors are made aware at or prior to the time of trade that the securities position they are about to purchase is below the minimum denomination and that the liquidity of that position may be adversely affected by this fact.

2. Basis

The MSRB believes the proposed rule change is consistent with Section 15(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules:

> . . . be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade . . . and to protect investors and the public interest . . .

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Member, Participants, or Others

On March 14, 2001, the MSRB published a notice seeking comment on an exposure draft of the proposed rule change (''March 2001 draft amendment'')[4] the terms of which substantially were the same as the rule G–15 amendment. The March 2001 draft amendment differed from the one in the proposed rule change in that it would have restricted transactions in all municipal securities, while the one in the proposed rule change applies only to municipal securities issued after June 1, 2002. In addition, the proposed rule change includes an interpretation of rule G–17 and a rule G–8 recordkeeping requirement, while the March 2001 draft amendment did not.

The MSRB received comments on the March 2001 draft amendment from the following fifteen commentators: A.G. Edwards & Sons, Inc. (''A.G. Edwards''); Association for Investment Management and Research (''AIMR''); Colorado Health Facilities Authority (''Colorado HFA''); First Miami Securities, Inc. (''First Miami''); Idaho Health Facilities Authority (''Idaho HFA''); Indiana Health Facility Financing Authority (''IHFFA''); Maryland Health and Higher Educational Facilities Authority (''Maryland HHEFA''); MEK Securities LLC (''MEK Securities''); National Council of Health Facilities Finance Authorities (''NCHFFA''); New Jersey

[3] A below-minimum denomination position may be created, for example, by call provisions that allow calls in amounts less than the minimum denomination, investment advisors who may split positions they purchase among several clients or the division of an estate as a result of a death or divorce. Such below-minimum denomination positions also may be created as a result of a gift.

[4] ''Minimum Denominations,'' *MSRB Reports,* Vol. 21, No. 1 (May 2001) at 15.

Health Care Facilities Financing Authority (''NJHCFFA''); Regional Municipal Operations Association (''RMOA''); Securities Operations Division—Securities Industry Association (''SIA Operations Division''); Stoever Glass and Co. (''Stoever Glass''); The Bond Market Association (''TBMA''); and Wisconsin Health and Educational Facilities Authority (''Wisconsin HEFA'').

Among these commentators there was general though not unanimous support. All six municipal securities issuers who commented (''Six Issuers'')[5] and the NCHFFA stated ''the draft amendment strikes an appropriate balance between enforcing the bondholder protections contained in the bond documents and not unduly impairing the liquidity of bonds currently held in unauthorized denominations by unsuspecting bondholders.'' AIMR stated that they ''view the MSRB's attempt to hold dealers accountable for complying with set minimum denominations as a positive step in reinforcing certain safeguards for existing and potential investors.'' A.G. Edwards also supported the March 2001 draft amendment because ''it will provide a level of comfort and certainty for customers and member firms when dealing with such situations, which usually are not of their own making.'' The SIA Operations Division stated that it ''supports the intent of the MSRB to ensure compliance with issuer guidelines relating to minimum denominations in transactions effected for customers.''

Some commentators, however, expressed basic disagreement over the use of minimum denominations as a means to restrict purchasers to certain types of investors. Stoever Glass stated that a ''minimum purchase requirement does not properly address the intended purpose, if the purpose is to limit the purchase of such securities to sophisticated accredited investors.'' First Miami stated, ''Since many investors will increase their purchase to the $100,000 minimum, they will be taking on more risk than they are normally inclined to. If they don't want to invest the minimum $100,000, they are then unfairly denied access to these securities.''

The TBMA emphasized the burden that the March 2001 draft amendment would place on dealers and on investors currently holding below-minimum denomination positions. The RMOA emphasized the operational difficulties that the March 2001 draft amendment would impose on dealers. Several commentators noted the potential loss of liquidity of current below-minimum denomination positions[6] and the fact that below-minimum denomination positions can be created by a variety of factors other than dealer action.[7]

1. Prospective Application

The MSRB agrees with those commentators who noted that, even with the two exceptions, the proposed restrictions would made it more difficult for dealers to transact in below-minimum denomination positions.[8] to use the exceptions, a dealer must: (a) establish that a proposed transaction fits into one of the exceptions; and (b) provide separate written disclosure to any customer buying into a below-minimum denomination position. These requirements would likely make below-minimum denomination positions currently held by investors more difficult for dealers to sell.

Because of the effect that the March 2001 draft amendment's trading restriction would have placed on below-minimum denomination positions, nine commentators suggested that the draft amendment apply only to securities issued after some date in the future.[9] The MSRB adopted this suggestion and believes it will help to minimize the negative effect on liquidity for existing bondholders with below-minimum denomination positions and allow issuers, dealers and information vendors to change their current practices and systems if necessary to accommodate the proposed rule change.[10] The MSRB views this as a significant cost to vendors and dealers, but not a major one.[11] The MSRB believes that June 1, 2002 would be an appropriate effective date for such a rule so that issues issued after that date would be covered by the rule.

2. Confirmation Disclosure or Separate Written Disclosure

For those securities issued after the effective date, the March 2001 draft amendment would have required a dealer to provide a separate written disclosure to a customer purchasing a below-minimum denomination position. RMOA suggested that it would be easier for the dealer in this case simply to provide confirmation disclosure. The MSRB concluded that confirmation disclosure would be easier for some dealers, but noted that other dealers may find it easier to send a separate written document rather than to change their automated systems that produce customer confirmations. Since either form of written disclosure should serve the same purpose, the MSRB chose to give dealers the option of providing written disclosure on a separate written document or on a trade confirmation.

3. Institutional Customers

A proposal was made by Stoever Glass to limit sales of below-minimum denomination positions to accredited investors, in lieu of the restrictions proposed by the March 2001 draft amendment. The MSRB considered whether it would be possible to restrict sales of below-minimum denomination positions to ''institutional accounts,'' as defined under MSRB rule G-8(a)(xi), without a separate written disclosure. While this exemption probably would fit within the issuer's objective, it would be inconsistent with the approach taken in the Exchange Act Rule 15c2–12 and the MSRB did not adopt it.

4. Customer Ability To Sell Part of Below-Minimum Denomination Position Instead of Whole Position Liquidated

A.G. Edwards, TBMA and SIA Operations Division stated that they believe it is unfair to the investor holding a below-minimum denomination position to be required to sell the entire position at one time. The MSRB believes that allowing partial sales by the customer in these cases would act against the basic purpose of the rule. For example, an institutional investor holding a position of $95,000 could sell out the position at $5,000 or $10,000 per transaction, effectively reaching the retail market with the securities and creating a number of below-minimum denomination positions where there was once only one. The MSRB also notes that, with the prospective application of the rule,

[5] Colorado HFA, Idaho HFA, IHFFA, Maryland HHEFA, NJHCFFA, and Wisconsin HEFA.

[6] Six Issuers, NCHFFA, SIA Operations, Stoever Glass and TBMA.

[7] A.G. Edwards, RMOA and TBMA.

[8] MEK Securities, RMOA, SIA Operations and TBMA. The proposed rule change would not, as suggested in the A.G. Edwards letter and TBMA letter, restrict inter-dealer transactions since rule G–15 applies only to customer transactions.

[9] Six Issuers and NCHFFA, RMOA and TBMA.

[10] The accuracy of vendor information on minimum denominations was called into question in the comment letters of A.G. Edwards and TBMA. MEK Securities suggested an enhancement to the MSRB's web site that would include a list of CUSIP numbers and their respective minimum denominations. Since private vendors have been active in collecting descriptive information on municipal securities for a number of years, the MSRB believes that information generally is available, even though, as in any information database there may be errors. The MSRB does not believe that it should explore undertaking this information function itself unless the vendor response to the proposed rule change is shown to be ineffective.

[11] Based on representations from the three major information vendors, each has a field for minimum denominations.

current investors would not be affected and that future investors in issues issued after June 1, 2002 will have notice of the effect of minimum denominations on their municipal securities positions.

5. Other Suggestions

A.G. Edwards and TBMA both recommended that dealers should be able to correct an erroneous transaction done in a below-minimum denomination amount. If a dealer mistakenly sells a below-minimum denomination position to a customer, such a correction generally would be possible under the second exception in the proposed rule change.[12] Other commentators suggested that the rule should not apply if the issuer failed to state the purpose of its denomination restriction in bond documents or if a below-minimum denomination position was created by an action of the issuer, such as by a partial call. The MSRB notes that issuers do not generally state the purpose of the denominations they choose. Moreover, Rule 15c2–12 provides disclosure exemptions that apply to an issue regardless of whether the issuer states the purpose of its minimum denomination in bond documents or exercises calls that take an investor's authorized position into a below-minimum denomination amount. Therefore, the MSRB has not adopted these suggestions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

[12] There may be unique situations when dealers effect transactions in violation of the rule and cannot reverse the transactions under the second exception. For example, a dealer may unintentionally sell an unauthorized amount of securities to a customer already holding an authorized amount. The transaction would be a violation of the rule, albeit an unintentional one. The MSRB believes the enforcement agencies have enough flexibility that they are not required to further penalize the dealer if the dealer corrects the situation by reversing the transaction.

IV. Solicitation of Comments

Interested persons are inviting to submit written data, views, and arguments concerning the forgoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File SR–MSRB–2001–07 and should be submitted by January 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31917 Filed 12–27–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45167; File No. SR–PCX–2001–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

December 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2001, the Pacific Exchange, Inc. (''PCX'') filed with the Security and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to change its marketing fee for certain options and to declare a marketing fee for recently listed options. A copy of the proposed new Schedule of Fees and Charges for Exchange Services is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX segregates the funds from this fee by trading post and makes the funds available to Lead Market Makers for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees in the amounts set forth in its Schedule of Fees and Charges for Exchange Services, hereinafter referred to as the ''Schedule of Rates.''

The PCX proposes to amend its Schedule of Rates in order to change the marketing fee that it charges for certain options and to adopt new marketing fees for newly listed options, beginning with the start of the December trade month and continuing until further notice. Only the amount of the fee is being changed.[4] The PCX believes that the

[3] *See* Securities Exchange Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR–PCX–2001–37).

[4] The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed amended Schedule of Rates. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. Telephone conversation between Mai Shiver, Senior Attorney, PCX, and Patrick Joyce, Special Counsel, Division of Market Regulation, Commission, on December 10, 2001.

proposed rule change has been designed to enable the PCX to compete with other markets in attracting options business, and that the proposed rule change is therefore reasonable and equitable.

2. Basis

The PCX believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] particularly Section 6(b)(4) of the Act,[6] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the PCX has designated the foregoing as a fee change pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(2) thereunder,[8] the proposal has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–49 and should be submitted by January 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31871 Filed 12–27–01; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.625 (4 5/8) percent for the January–March quarter of FY 2002.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 01–31951 Filed 12–27–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region 1—Maine District Advisory Council; Public Meeting

The U.S. Small Business Administration Augusta, Maine District Advisory Council, will hold a public meeting at 10:00 a.m. February 5th, 2002 at 68 Sewall Street, Room 510, Augusta, Maine to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Mary MaAleney, in writing by letter or fax no later than January 25th, 2002, in order to be put on the agenda. Please direct questions to Mary McAleney, District Director, U.S. Small Business Administration, 68 Sewall Street, Room 512, Augusta, Maine 04330, (201) 622–8386 phone, (207) 622–8277 fax. For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, 68 Sewall Street, Room 512, Augusta, Maine 04330, (207) 622–8386 phone, (207)622–8277 fax.

Steve Tupper,

Committee Management Officer.

[FR Doc. 01–31952 Filed 12–27–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Modifications to the Disability Determination Procedures; Extension of Disability Claims Process Redesign Prototype and Test of Single Decisionmaker Model

AGENCY: Social Security Administration.

ACTION: Notice of the extension of two tests involving modifications to the disability determination procedures.

SUMMARY: We are announcing the extension of two tests of modifications to our disability determination procedures that we are conducting under the authority of current rules codified at 20 CFR 404.906 and 416.1406. These rules provide authority to test several modifications to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and for supplemental security income payments based on disability under title XVI of the Act. We have decided to extend selection of cases for six months while we identify the most positive elements of the tests for rollout, and to enable us to address transition issues.

DATES: We are extending our selection of cases to be included in these tests from December 31, 2001 until no later than June 28, 2002. If we decide to continue selection of cases for these tests beyond this date, we will publish another notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Phil Landis, Director, Disability Process Redesign Staff, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland, 21235, 410–965–5388.

SUPPLEMENTARY INFORMATION: Current regulations at 20 CFR 404.906 and 416.1406 authorize us to test, individually or in any combination, several different modifications to the disability determination procedures. We

have conducted several tests under the authority of these rules, including a prototype that incorporates a number of modifications to the disability determination procedures that the State agencies use. We also have conducted tests involving the use of a single decisionmaker who may make the initial disability determination in most cases without requiring the signature of a medical consultant. We are now announcing the extension of these two tests.

Extension of Test of Prototype Process

On August 28, 1999, we published in the **Federal Register** a notice announcing that we would test a new disability claims process in 10 States (64 FR 47218). In that notice, we stated that selection of cases to be included in the prototype would begin on or about October 1, 1999, and would be concluded on or about December 31, 2001. We also stated that, if we decided to continue the prototype beyond that date, we would publish another notice in the **Federal Register**. That is one of the purposes of this notice. We have decided to extend selection of cases for the prototype process beyond December 31, 2001, while we identify the most positive elements of the tests for rollout, and to enable us to address transition issues. We expect that our selection of cases under the prototype will end on or before June 28, 2002.

This extension also applies to the locations in the State of New York that we added to the test in a notice published in the **Federal Register** on December 26, 2000 (65 FR 81553).

Extension of Test of Single Decisionmaker Model

On December 23, 1999, we published a notice in the **Federal Register** (65 FR 72134) extending through December 31, 2001, the period during which we would select cases to be included in a test of the single decisionmaker feature. We have decided to extend selection of cases for the test of the single decisionmaker beyond December 31, 2001, to allow time for us to make decisions about this feature. We expect that our selection of cases for the test of the single decisionmaker will end on or before June 28, 2002.

Dated: December 19, 2001.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. 01–31895 Filed 12–27–01; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Ticket to Work and Work Incentives Advisory Panel Teleconference

AGENCY: Social Security Administration (SSA).

ACTION: Notice of teleconferences.

DATES: January 23, 2002 and January 24, 2002.

ADDRESSES: Ticket to Work and Work Incentives Advisory Panel Office, Social Security Administration, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.

TELECONFERENCES: Wednesday, January 23, 2002, 3 p.m. to 6 p.m.; Thursday, January 24, 2002, 1 p.m. to 4 p.m.:

Ticket to Work and Work Incentives Advisory Panel Conference Calls. Call-in number for both days: 1–888–793–1765. Pass code for both days: 12211. Leader/Host: Sarah Wiggins Mitchell.

SUPPLEMENTARY INFORMATION:

Type of meeting: These teleconference meetings are open to the public. The interested public is invited to participate by coming to the address listed above or calling into the teleconferences. Public testimony will not be taken.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces these teleconference meetings of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Agenda: The Panel will deliberate on the implementation of TWWIIA, conduct committee activities and administrative business. Topics of discussion may include the Panel's annual report and the Social Security Administration's adequacy of incentive study and $1 for $2 research. The agendas for these meetings will be posted on the Internet at *http://www.ssa.gov/work/panel/* one week prior to the teleconferences or can be received in advance electronically or by fax upon request.

Contact Information: Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff by:

- Mail addressed to Ticket to Work and Work Incentives Advisory Panel Staff, Social Security Administration, 400 Virginia Avenue, SW., Suite 700, Washington, DC, 20024;
- Telephone contact with Kristen Breland at (202) 358–6430;
- Fax at (202) 358–6440; or
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: December 19, 2001.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 01–31896 Filed 12–27–01; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice #3834]

Notice of Meetings; United States International Telecommunication Advisory Committee, Telecommunication Sector

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU).

The ITAC will meet from 9:30 to 12:30 on Tuesday. January 3, 2002 to continue preparations for the ITU Plenipotentiary Conference (PP02). This meeting will be held in the IRAC Room (Room 1605) of the Department of Commerce, 14th and Constitution Avenue, Washington, DC. Individuals from the private sector who desire to attend should advise the State Department (*jillsonad@state.gov*) by name and affiliation. The ITAC PP02 meeting previously scheduled for January 15 has been cancelled.

The ITAC will meet as the ITAC-T from 9:30 to noon on Wednesday, January 9, 2002 to debrief the November 2001 Telecommunication Sector Advisory Group (TSAG) meeting and to start preparations for the next TSAG in June 2002. This meeting will be held at the Telecommunications Industry Association, 1300 Pennsylvania Avenue, Suite 350, Washington, DC.

The ITAC will meet as US Study Group B from about noon to 4:00 on Friday, January 11, 2002 to prepare for meetings of ITU Study Groups 13 and 16. This meeting will be held at the Hyatt Regency Savannah, 2 West Bay Street, Savannah, GA 31401.

The ITAC will meet as US Study Group D from 9:30 to 3:30 on Wednesday, January 16, 2002 to prepare for meetings of ITU Study Groups 16 and 17. This meeting will be held at the Telecommunications Industry Association, 1300 Pennsylvania Avenue, Suite 350, Washington, DC. If preparations for SG17 are not completed at this meeting, they will be continued via email from February 6–13, 2002. Directions for joining the Study Group D email reflector for this e-mail meeting can be provided by the Secretariat (see below).

Members of the general public may attend these meetings. Directions to meeting location and actual room assignments may be determined by calling the ITAC Secretariat at 202 647–0965 or e-mail to *minardje@state.gov.*

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Dated: December 20, 2001.

Doreen F. McGirr,

Director, Telecommunications Development, U.S. Department of State.

[FR Doc. 01–31970 Filed 12–27–01; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Public Notice 3833]
[Docket No. MARAD–2001–11135]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Carriage of Goods by Sea; Meeting Notice

There will be a public meeting of a study group of the Secretary of State's Advisory Committee on Private International Law on Wednesday, January 9, 2002, to consider the draft instrument on the International Carriage of Goods by Sea, as prepared by the Comité Maritime International (CMI) for the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 9:30 a.m. to 5:00 p.m. in rooms 3200–3204 of the Nassif building at the Department of Transportation, 400 Seventh Street, SW, Washington, DC.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in determining the U.S. negotiating position for the first session of the UNCITRAL Working Group on this draft instrument, to be held in New York from April 15 to 26, 2002.

The text prepared by CMI at the request of UNCITRAL will constitute the basic working document of the UNCITRAL Working Group. A copy of the preliminary draft convention should shortly be available on UNCITRAL's website, *www.uncitral.org.* Persons interested in the work of the study group may also request copies from Ms. Rosalia Gonzales by fax at 202–776–8482, by telephone at 202–776–8420 (you may leave your request, name, telephone number, e-mail, or mailing address on the answering machine), or by e-mail at *gonzaler@ms.state.gov.* E-mail is the most efficient way to transmit the documents.

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons wishing to attend should contact Ms. Gonzales by telephone, fax, or e-mail, providing their name, affiliation, telephone and fax number, and e-mail address. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments should refer to docket number MARAD–2001–11135. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.s.t., Monday through Friday, except federal holidays. An electronic version of this document along with all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

Mary Helen Carlson,

Attorney-Adviser, Office of the Assistant Legal Adviser For Private International Law, U.S. Department of State.

Edmund T. Sommer, Jr.,

Chief, Division of General and International Law, Office of the Chief Counsel, Maritime Administration, U.S. Dept. of Transportation.

[FR Doc. 01–31971 Filed 12–27–01; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Extension of Deadline for the Submission of Written Comments on What Action, if Any, the President Should Take Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel and Responses to Such Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Extension of deadline for submission of comments and responses.

SUMMARY: The Trade Policy Staff Committee (''TPSC'') is extending the deadline for the submission of written comments on what action, if any, the President should take under section 203 of the Trade Act of 1974 (19 U.S.C. 2253) (''Trade Act'') with regard to imports of certain steel and responses to such written comments, which were requested in a **Federal Register** notice of October 26, 2001. *See* 66 FR 54321 (''Notice'').

DATES: The deadline for written comments on what action, if any, the President should take under section 203 of the Trade Act is being extended to January 4, 2002, and the deadline for responses to such written comments is being extended to January 15, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On October 26, 2001, the TPSC published in the **Federal Register** a request for written public comments on what action the President should take under section 203 of the Trade Act to facilitate efforts by the domestic industries producing certain steel products to make a positive adjustment to import competition and provide greater economic and social benefits than costs. *See* 66 FR 54321 (''Notice''). According to the Notice, the deadline for the submission of written comments on what action, if any, the President should take under section 203 of the Trade Act is December 28, 2001, and the deadline for responses to such written comments is January 8, 2002. The TPSC is extending the deadline for written comments until not later than January 4, 2002, and the deadline for responses to written comments until not later than January 15, 2002. Parties should refer to the Notice, as modified by the TPSC's **Federal Register** notice of November 29, 2001 (66 FR 59599), for

instructions for the submission of written comments.

Donald Eiss,

Acting Chair, Trade Policy Staff Committee.

[FR Doc. 01–32002 Filed 12–27–01; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Orange County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a series of proposed grade separations within the Orangethorpe Rail Corridor (a section of the Burlington Northern Santa Fe rail line) located within the Cities of Placentia and Anaheim in Orange County, California.

FOR FURTHER INFORMATION CONTACT: Tay Dam, Senior Transportation Engineer, Federal Highway Administration—Los Angeles Metro Office, 201 N. Figueroa Street, Suite 1460, Los Angeles, CA 90012. Telephone: (213) 202–3954.

SUPPLEMENTARY INFORMATION: The Burlington Northern Santa Fe (BNSF) rail line through Orange County is one of three main rail freight routes out of the Los Angeles area. International cargo comes into and out of the Ports of Los Angeles and Long Beach. The BNSF rail line serves those ports via the Alameda Corridor, a joint use line serving both the Union Pacific and BNSF railway companies, connects to the Hobart Yard outside downtown Los Angeles, and proceeds southeast through Pico Rivera and Santa Fe Springs. The line then continues through northern Orange County, the City of Corona, San Bernardino County, and, ultimately, the Gulf States and eastern United States. This proposed project is a part of the regional traffic congestion relief project called the Orange County Gateway (OCG) which is located within the limits of the Cities of Placentia, Fullerton, Anaheim, Yorba Linda, and the County of Orange.

The FHWA, as a federal lead agency, in cooperation with the Federal Railroad Administration, the California Department of Transportation, and the City of Placentia/Orange North American Trade Rail Access Corridor Authority (On Trac), will prepare an Environmental Impact Statement (EIS) on a proposal to (1) Reduce traffic congestion; (2) eliminate or reduce the current and potential hazards posed by the existing at-grade crossings; (3) accommodate currently planned railroad expansion; (4) and implement transportation strategies to increase the efficiency of moving people and goods throughout the Orangethorpe Rail Corridor area.

Alternatives under consideration include (1) A no build option; (2) a series of grade separations option; and (3) a railroad trench option within the Orangethorpe Rail Corridor between Placentia Avenue and Imperial Highway in northern Orange County, California.

These basic alternatives will have additional design variations and other engineering details. A final selection of study alternatives and their subset variations will not be made until all public and agency comments are reviewed following the Scoping process.

Note: As required by the National Environmental Policy Act (NEPA) of 1969, all other reasonable alternatives will be considered. These alternatives may be refined, combined with various different alternative elements, or be removed from further consideration, as more analysis is conducted on the project alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public scoping meetings will be held on January 22 and 24, 2002 in the City of Placentia prior to preparation of the draft EIS. Public notice will be given of the time and place of these meetings.

Public hearing(s) will be held after the draft EIS is completed. Public notice will be given of the time and place of the hearing(s). The draft EIS will be available for public and agency review and comment prior to the formal public hearing(s).

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 19, 2001.

Jeffrey W. Kolb,

Chief, District Operations-South, Sacramento, California.

[FR Doc. 01–31904 Filed 12–27–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Presidential Memorandum of December 12, 2001; Marine War Risk Insurance Under Title XII of the Merchant Marine Act, 1936

On December 12, 2001, President George W. Bush approved the provision of vessel war risk insurance by memorandum for the Secretary of State and the Secretary of Transportation. The text of this memorandum reads:

By virtue of the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. 301 and section 1202 of the Merchant Marine Act, 1936, as amended (the ''Act''), 46 U.S.C. App. 1282, I hereby:

Approve the provision by the Secretary of Transportation of insurance or reinsurance of vessels (including cargoes and crew) entering the Middle East region against loss or damage by war risks in the manner and to the extent approved in title XII of the Act, 46 U.S.C. App. 1281, *et seq.*, for purposes of responding to the recent terrorist attacks, whenever, after consultation with the Department of State, it appears to the Secretary of Transportation that such insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States. The approval is effective for 6 months.

I hereby delegate to the Secretary of Transportation, in consultation with the Secretary of State, the authority vested in me by section 1202 of the Act, to approve the provision of insurance or reinsurance for these purposes after the expiration of 6 months.

The Secretary of Transportation is directed to bring this approval to the immediate attention of all operators and to arrange for its publication in the **Federal Register**.

By Order of the Maritime Administrator.

Dated: December 21, 2001.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 01–32019 Filed 12–27–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 28, 2001 [66 FR 12829–12831].

DATES: Comments must be submitted on or before January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara Williams at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–01), 202–366–4327. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 556, Petitions for Inconsequentiality.

OMB Number: 2127–0045.

Type of Request: Reinstatement, without change, of a previously approved collection for which has expired.

Abstract: The National Highway Traffic Safety Administration's statue at 49 U.S.C. 30113 General exemptions at subsection (b) Authority to exempt and procedures, authorizes the Secretary of Transportation upon application of a manufacturer, to exempt the applicant from the notice and remedy requirements of 49 U.S.C. Charter 301, if the Secretary determines that the defect or noncompliance is inconsequential as it relates to motor vehicle safety. The notice and remedy requirements of Chapter 301 are set forth in 49 U.S.C. 30120 Remedies for defects and noncompliance. Those sections require a manufacturer of motor vehicles or motor vehicle equipment to notify distributors, dealers, and purchasers if any of the manufacturer's products are determined either to contain a safety-related defect or to fail to comply with an applicable Federal motor vehicle safety standard. The manufacturer is under a concomitant obligation to remedy such defects or noncompliance. NHTSA exercised this statutory authority to excuse inconsequential defects or noncompliance when it promulgated 49 CFR part 556, Petitions for Inconsequentiality-this regulation establishes the procedures for manufacturers to submit such petitions to the agency will use in evaluating those petitions. Part 556 allows the agency to ensure that petitions filed under 15 U.S.C. 30113 (b0 are both properly substantiated and efficiently processed.

Affected Public: Business or other-for-profit.

Estimated Total Annual Burden: 30.

ADDRESS: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC on December 21, 2001.

Delmas Johnson,

Acting Associate Administrator for Administration.

[FR Doc. 01–32012 Filed 12–27–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Federal Register Notice with a 60-day comment period was published on February 28, 2001 [66 FR 12829–12831].

DATES: Comments must be submitted on or before January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Jonathan White at the National Highway Traffic Safety Administration, Office of Defects & Recall Information Analysis (NSA–11), 202–366–5227. 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Names and Addresses First Purchasers of Motor Vehicles.

OMB Number: 2127–0044.

Type of Request: Reinstatement, with change, of a previously approved collection for which has expired.

Abstract: 49 U.S.C. 30117 Providing information to, and maintaining records on, purchasers at subparagraph (b) Maintaining purchaser records and procedures states in part: A manufacturer of motor vehicle or tire (except a retreaded tire) shall maintain a record of the name and address of the first purchasers of each vehicle or tire it produces and, to the extent prescribed by regulations of the Secretary, shall maintain a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces. This agency has no regulation specifying how the information is to be collected or maintained. When NHTSA's authorizing statue was enacted in 1966, Congress determined that an efficient recall of defective or noncomplying motor vehicles required the vehicle manufacturers retain an accurate record of vehicle purchasers, By virtue of quick and easy access to this information, the manufacturer is able to quickly notify vehicle owners in the event of the of a recall. Experience with this statutory provision has shown that manufacturers have retained this information in a manner sufficient to enable them to expeditiously notify vehicle purchasers in case of a recall. Based on this experience, NHTSA has determined that no obligation is needed. Without this type of information readily available, manufacturers would either need to spend more time or money to notify purchasers of a recall.

Affected Public: Business or other-for-profit.

Estimated Total Annual Burden: 950,000.

ADDRESS: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC on December 21, 2001.

Delmas Johnson,

Acting Associate Administrator for Administration.

[FR Doc. 01–32013 Filed 12–27–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Federal Register Notice with a 60-day comment period was published on August 16, 2001, 66 FR 43037.

DATES: Comments must be submitted on or before January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Heidi L. Coleman at the National Highway Traffic Safety Administration, Office of Chief Counsel, NCC–30, 202–366–1834, 400 Seventh Street, SW., Room 5219, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration (NHTSA)

Title: 49 CFR Part 512, Confidential Business Information.

OMB Number: 2127–0025.

Type of Request: Extension of a currently approved collection.

Abstract: NHTSA's statutory authority under title 49 of the United States Code prohibits the agency, with certain exceptions, from making public confidential information which it obtains. On the other hand, the Administrative Procedure Act requires all agencies to make public all non-confidential information upon request (5 U.S.C. 552) and all agency rules to be supported by substantial evidence in the public record (5 U.S.C. 705). It is therefore important for the agency to determine promptly whether or not information it obtains should be accorded confidential treatment.

NHTSA promulgated 49 CFR part 512, Confidential Business Information, to establish the procedure by which NHTSA will consider claims that information submitted to the agency, or which it otherwise obtains, is confidential business information. Because of part 512, both NHTSA and the submitters of information for which confidential treatment is requested are able to ensure that confidentiality requests are properly substantiated and expeditiously processed.

Affected Public: Business and other for-profit, individuals or households.

Estimated Total Annual Burden: 1064 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Dated: Washington, DC, November 29, 2001.

John Womack,

Acting Chief Counsel.

[FR Doc. 01–32014 Filed 12–27–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on February 28, 2001 [66 FR 12829–12831].

DATES: Comments must be submitted on or before January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Jonathan White at the National Highway Traffic Safety Administration, Office of Defects & Recall Information Analysis (NSA–11), 202–366–5227, 400 Seventh Street, SW., Room 5319, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration.

Title: 49 CFR part 566 Manufacturer's Identification.

OMB Number: 2127–0043.

Type of Request: Reinstatement, with change, of a previously approved collection for which has expired.

Abstract: The National Highway Traffic Safety Administration's statute at 49 U.S.C. 30118 Notification of defects and noncompliance requires manufacturers to determine if the motor vehicle or item or replacement equipment contains a defect related to motor vehicle safety or fails to comply with an applicable Federal Motor Vehicle Safety Standard. Following such determination, the manufacturer is required to notify the Secretary of Transportation, owners, purchasers and dealers of motor vehicles or replacement equipment, of the defect or noncompliance and to remedy the defect or noncompliance without charge to the owner. With this determination,

NHTSA issued 49 CFR part 566, Manufacturer Identification. Part 566 requires every manufacturer of motor vehicles and/or replacement equipment to file with the agency on a one time basis, the required information specified in part 566.

Affected Public: Business or other-for-profit.

Estimated Total Annual Burden: 25.

ADDRESS: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on December 21, 2001.

Delmas Johnson,

Acting Associate Administrator for Administration.

[FR Doc. 01–32015 Filed 12–27–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Commercial Motor Vehicle Crash Data Collection and Analysis Improvement

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability—discretionary grants to assist states in improving or revising their commercial vehicle crash data collection procedures.

SUMMARY: This notice solicits proposals from States for projects to improve traffic records, specifically data collection and analysis on commercial motor vehicle crashes. Where deficiencies in reporting or recording of such crashes are identified, a state may seek funding to develop new or revised systems or procedures and/or policies to improve its reporting and recording procedures. The NHTSA will provide grant funds to selected States to carry out the projects for improvements in data collection and analysis, in accordance with section 225 of Public Law 106–159.

DATES: Proposals must be received at the office designated below by 3 p.m. on or before February 26, 2002.

ADDRESSES: Proposals must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attn: Mr. Joe Comella, 400 7th Street SW., Room 5301, Washington, DC 20590. All applications must include a reference to NHTSA Program Number DTNH22–01–G–07083.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Comella, National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30). All questions and requests for copies may be directed by e-mail to *jcomella@nhtsa.dot.gov* or by telephone at 202–366–9568. Those desiring notification of receipt of their proposal submission must include a self-addressed, stamped envelope or postcard. Technical questions relating to this program should be directed to either Kenneth Rutland (*Kenneth.rutland@nhtsa.dot.gov*) NHTSA, Room 6213 (NRD–33) 400 7th Street SW., Washington, DC 20590, 202–493–0055, or to John Brophy (*John.Brophy@nhtsa.dot.gov*) NHTSA, Room 6125 (NRD–33) 400 7th Street SW., Washington, DC 20590, 202–366–0328.

SUPPLEMENTARY INFORMATION:

Background

In 1999, reports from the General Accounting Office and the United States Department of Transportation Inspector General recommended that improvements be made in the Federal Motor Carrier Safety Administration (FMCSA) crash and enforcement data. The existing FMCSA crash database, the Motor Carrier Management Information System (MCMIS) crash file, is intended to be a census of all large commercial truck and bus crashes that result in a fatality, injury, or towed vehicle. However, many truck and bus crashes do not reach the MCMIS data processing unit, and many of the reports received are not complete. To address this situation, section 225 of Public Law 106–159 [H.R. 3419] (49 U.S.C. 31100 note) directs the Secretary of Transportation to carry out a program to improve the collection and analysis of data on crashes involving commercial motor vehicles, administered through the National Highway Traffic Safety Administration (NHTSA) in cooperation with the FMCSA. Section 225 requires the NHTSA to enter into agreements with the States to collect data and report it electronically to a central repository. In accordance with this requirement, this notice makes funds available to the states in the form of grants for improvements in data collection and analysis of commercial motor vehicle involved crashes.

Project Goal

The goal is to improve the quality, completeness, timeliness and quantity of data collected by the States about commercial motor vehicle crashes. This data will be used to evaluate program effectiveness, identify problems and trends, target spending, and the like. In addition, this data will be used to support FMCSA's enforcement programs. By capturing more complete and accurate data, drivers and carriers of commercial motor vehicles can appropriately be subjected to reviews of their operations and cited for violations.

The FMCSA and NHTSA seek to improve timeliness, completeness, accuracy and overall quality of data collected on commercial motor vehicle involved crashes. These improvements will facilitate the identification of problem drivers and carriers and provide a solid foundation of data on which safety analyses and program evaluation can be based. A State seeking to participate in this effort must be willing to explore and test new and proven methodologies and protocols, allowing for rapid electronic exchange of crash data. The State's proposal should seek to enhance the accuracy, speed and completeness of commercial motor vehicle crash information among the various components of the records system, including enforcement, driver licensing agencies, vehicle registration agencies, State departments of transportation, the courts, both within States and across State boundaries.

The scope of potential projects or plans need not be limited to system development, changes or enhancements. A State may have a system that is technically sound but hampered by State procedures, policies, laws, or legislation preventing the State from utilizing its system in the most efficient and effective manner. Therefore, the NHTSA will entertain proposals that may not involve the system directly, but would meet the project goals through indirect effects.

Project Requirements

Grant proposals submitted by the States must meet certain criteria. The grant proposal criteria are designed to

assure maximum flexibility while ensuring that key State agencies and organizations participate in approved grant activities. A thorough evaluation design is another key requirement. Proposals must meet the following items to be considered:

1. Identify a lead Agency for the project.

2. Identify an interdisciplinary working group within the State, including but not limited to the state motor vehicle licensing agency, the crash records department, the vehicle registration agency, State law enforcement, Governor's Highway Safety Representative, and Motor Carrier Safety Assistance Program (MCSAP) representative.

3. Provide an analysis of existing systems or procedures, including discussion of the completeness, timeliness, quality and accuracy of the existing data collected in the MCMIS program.

4. Provide an estimate of the total number of reportable Commercial Motor Vehicle Crashes involving a fatality, injury, or towed vehicle, the total number reported to police enforcement (documented on PAR's and/or PAR Supplement Forms) and the total number of Commercial Motor Vehicle crashes that are entered into MCMIS. This is the gap (crash occurrence versus crashes entered into MCMIS) that this Grant funding targets for reduction.

5. Define new or improved system requirements to be implemented with funding under this Grant, including project scope, whether new technologies would be tested, and methods of gathering, integrating, and facilitating data exchange between various users. If the project is not system related, describe existing procedures, the problems they generate, proposed new procedures, anticipated outcome, and the means to measure the success or impact of the project or program.

6. Provide and submit a project evaluation plan and timelines for completion.

7. Define, analyze, and document user procedures, including projected barriers to project success.

8. Define the methodology for implementing the system or procedures.

9. Provide plans for preparing a final report, including the evaluation findings and recommendations for other States regarding the strengths and weaknesses of this project or program.

10. Provide a budget for the project.

11. Provide Monthly Progress Reports. The Grantee shall submit monthly progress reports to the COTR during the period of performance of this grant.

Eligibility Requirements

The grantee must be a state agency of one of the fifty States or the District of Columbia and involved with highway traffic safety, such as a State Highway Safety Office, Department of Transportation or other State agency with demonstrated activities in the highway traffic safety area, to ensure active involvement by highway traffic safety stakeholders.

Only one application should be submitted for a state. Because this Grant program requires extensive collaboration among the data owners in order to achieve the program objectives, it is envisioned that the grantee agency may need to actively involve the data owners in the development of the formal application.

A single organization within any state or area may not have all of the required data capabilities; the application should demonstrate methods to improve collaborative agreements with the data owners to facilitate the collection of commercial motor vehicle crash data.

This Grant is a parallel effort with the NHTSA's Commercial Vehicle Analysis Reporting System (CVARS) pilot effort with certain states. Those States that have been selected to participate in the CVARS pilot effort are ineligible for this Grant award.

Submission of Proposals

Proposals responding to this notice must remain valid for 90 days from the due date for submission of proposals, and may be funded at any time during that period. Submit one original and two copies of your application package to: The National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attn: Joe Comella, 400 7th Street SW., Room 5301, Washington, DC 20590. Applications must be typed on one side of page only.

An additional two (2) copies will facilitate the review process, but are not required. Only complete application packages received on or by 3 p.m. on February 26, 2002, will be considered.

Application Contents

The application package must be submitted with OMB Standard Form 424 REV. 7–97, including 424A and 424B), Application for Federal Assistance, with the required information filled in and assurances signed (SF 424B). While the Form 424A deals with budget information and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor category, level of effort, and rate; direct materials including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontractors/subgrants, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the project.

Evaluation of Proposals and Award

Initially, all application packages will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all of the items specified in the Project Requirement and Application Content section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation committee comprised of representatives from the NHTSA, FMCSA, and other traffic records experts. The panel will evaluate each proposal, based on the following factors:

1. The technical competency of the proposal and the likeliness of reducing the gap between the number of CMV crashes occurring and number entered into MCMIS and the amount of the reduction. (50%)

2. The reasonableness and adequacy of the cost and personnel resources proposed to complete the requirements in a timely manner. (30%)

3. The potential for this state (and potentially the portability of this improvement to other states) to utilize the improvements in the full-scale CVARS project. (20%)

Project Funding

NHTSA's intent is to provide up to $2,600,000 funding in FY 2002. States are invited to submit proposals outlining their projects to the NHTSA. This program will not require matching funds. However, States are encouraged to explore other funding sources in both the private and public sectors to implement improved data collection and analysis of commercial motor vehicle involved crashes and traffic records in general. NHTSA contemplates making eight to fifteen multiple awards from the proposals submitted.

Terms and Conditions of the Award

Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR

part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government wide Requirements for Drug Free Workplace (Grants).

During the effective performance period of Cooperative Agreements awarded as a result of this announcement, the agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

Reporting Requirements and Deliverables

1. Detailed Action Plan and Schedule. Within 30 days after award, the grantee shall deliver a detailed action plan which details the existing state procedures for reporting CMV crash data; and a schedule outlining the methods that will be employed to improve reporting. This detailed action plan will be subject to the approval of NHTSA.

2. Monthly progress reports. During the performance, the grantee will provide letter-type written reports to the NHTSA COTR. These reports will compare what was proposed in the Plan of Action with actual accomplishments during the past month; what commitments have been generated; what follow-up and state-level support is expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next reporting period. These reports will be submitted ten days after the end of each month.

3. Project Report. The grantee shall deliver to NHTSA, at the end of the project, a final report that describes the results of activities undertaken to improve CMV crash data collection. This report should include: the initial state of CMV reporting at the state level; methods, procedures, or technologies employed to improve reporting, obstacles encountered, improvements initiated, evaluation findings and recommendations for other States regarding the strengths and weaknesses of this project or program. The grantee shall supply the NHTSA COTR one camera read versions of the documents, as printed and one copy on appropriate media (diskette, Syquest disk, etc.) of the document in the original program format that was used for the printing process. Each of these component parts should be available on disk, properly labeled with the program format and the file names. A complete version of the assembled document shall be provided in portable document format (PDF) for placement of the report on the World Wide Web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document. The document must be completely assembled with all colors, charts, sidebars, photographs, and graphics. This shall be delivered to NHTSA on appropriate media. The grantee shall provide four additional hard copies of the final document.

An electronic copy of this document may be downloaded by accessing the Federal Register home page at *http://www.nara.gov/nara/fedreg* and the Government Printing Office database at *http://www.access.gpo.gov/su_docs*

Issued on: December 20, 2001.

Raymond R. Owings,

Associate Administration for Research and Development.

[FR Doc. 01–32022 Filed 12–27–01; 8:45 am]

BILLING CODE 4910–12–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on exemption applications in SEPTEMBER–DECEMBER 2000. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on December 21, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
MODIFICATION EXEMPTIONS				
3187–M	DOT–E 3187	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.21(f), 173.225(b)(6), 173.225(b)(7), 173.225(d)(2).	To authorize alternative packaging and the use of common carriers in exclusive use for the transportation of Division 5.2 materials.
8299–M	DOT–E 8299	Pacific Scientific, Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.44.	To modify the exemption to increase the service life limit to 24 years of the non-DOT specification pressure vessels for the transportation of certain Division 2.2 compressed gases.
8757–M	DOT–E 8757	YZ Systems, Inc., Conroe, TX.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.302(b)(1), 175.3, 178.42.	To modify the exemption to allow for the transportation of additional Division 2.3 and Class 3 materials in non-DOT specification stainless steel cylinders; editorial corrections to paragraph 6 of the exemption.
9149–M	DOT–E 9149	Ethyl Corporation, Richmond, VA.	49 CFR 173.354, 174.63(b), 178.245.	To modify the exemption to authorize the transportation of Class 3 and additional division 6.1 materials in non-DOT specification IMD Type I portable tanks.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9847–M	DOT–E 9847	FIBA Technologies, Inc., Westboro, MA.	49 CFR 173.302(c)(2), (3), (4), 173.34(e), Part 107, Subpart B, Appendix B.	To modify the exemption to eliminate the requirement for an initial qualifying test; to allow for Division 2.3 materials; correct language in paragraphs 7a. thru e. of the exemption.
10921–M	DOT–E 10921	The Procter & Gamble Company, Cincinnati, OH.	49 CFR Parts 100–199	To modify the exemption to authorize shipments of solutions containing ethyl alcohol in inner packagings not exceeding 50 ounces each and that the total contents of the package not exceed 300 fluid ounces.
10977–M	DOT–E 10977	Federal Industries Corporation, Plymouth, MN.	49 CFR 172.400, 172.402(a)(2), 172.504(a), 173.25(a), 173.3, 175.3, Table 1.	To modify the exemption to include polypropylene blankets as a cushioning and absorbent, and a fibre tube to protect the closure for limited quantities of hazardous materials required to be labeled poison, KEEP AWAY FROM FOOD, flammable liquid, flammable solid, corrosive, oxidizer or DANGEROUS WHEN WET.
10985–M	DOT–E 10985	Georgia-Pacific Corporation, Atlanta, GA.	49 CFR 174.67(i), (j)	To modify the exemption to authorize the transportation of Class 8 materials in tank cars which remain standing with unloading connections attached when no product is being transferred.
11379–M	DOT–E 11379	TRW Automotive Occupant Restraint Systems, Washington, MI.	49 CFR 173.301(h), 173.302.	To modify the exemption to authorize a design change of the pressure vessel to increase the maximum fill pressure to 7,500 psi charged with non-toxic, non-liquefied gases, or mixtures thereof.
11506–M	DOT–E 11506	OEA Inc., Denver, CO	49 CFR 173.301(h), 173.302.	To modify the exemption to authorize a design change using a welded flange and laser etching on the exterior of non-DOT specification pressure vessels for use as components of automobile vehicle safety systems.
11967–M	DOT–E 11967	Savage Industries Incorporated, Pottstown, PA.	49 CFR 174.67(i), (j)	To modify the exemption to allow for the transportation of additional Class 3, Class 8 and Division 5.1 materials in tank cars to remain connected during unloading.
12056–M	DOT–E 12056	U.S. Department of Defense (MTMC), Falls Church, VA.	49 CFR 173.226, 173.336	To modify the exemption to eliminate the private carrier provision and provide for an additional movement location for the transportation of Dinitrogen tetroxide, liquefied and Division 6.1 materials in propellant tanks designed to a military specification.
12065–M	DOT–E 12065	International Flavors & Fragrances, Inc., Union Beach, NJ.	49 CFR 173.120(c)(ii)	To modify the exemption to waive the weight limit requirements for flammable liquids determined by a specially designed flashpoint device.
12494–M	DOT–E 12494	American Reclamation Group, LLC, Anchorage, AK.	49 CFR 172.101 (col. 9) ..	To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 5.1 materials by cargo aircraft only when aircraft is the only means of reaching destination.
12499–M	DOT–E 12499	M & M Service Company, Carlinville, IL.	49 CFR 173.315(k)(6)	To reissue the exemption originally issued on an emergency basis for the transportation of liquefied petroleum gas in a non-DOT specification cargo tank.
12504–M	DOT–E 12504	Radian International Research Triangle Park, NC.	49 CFR 177.834(1)(2)(i) ..	To reissue the exemption originally issued on an emergency basis authorizing the use of temperature controlled equipment for the transportation of Class 3 and Division 2.1 materials.
12509–M	DOT–E 12509	Department of Defense (MTMC) Alexandria, VA.	49 CFR 172.101 col 10A	To reissue the exemption originally issued on an emergency basis authorizing certain Division 4.2 materials to be stowed as palletized cargo in an under-deck forecastle location.
12540–M	DOT–E 12540	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 178.245	To reissue the exemption originally issued on an emergency basis authorizing the transportation of hydrogen fluoride, anhydrous in DOT Specification 51 portable tanks which do not have the relieving capacity requirements.
			NEW EXEMPTIONS	
12148–N	DOT–E 12148	Eastman Kodak Company, Rochester, NY.	49 CFR 172.320, 173.3, 173.52, 173.54, 173.60, 174.3, 175.3, 177.801.	To authorize the transportation in commerce of not more than 25 grams of explosives and pyrotechnic material in a specially designed container (modes 1, 3, 4).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12155–N	DOT–E 12155	S&C Electric Co	49 CFR 172.301(c), 173.304.	To authorize the transportation in commerce of specially designed non-DOT specification packaging containing compressed sulfur hexafluoride, Division, 2.2 (modes 1, 2, 3, 4).
12277–N	DOT–E 12277	The Indian Sugar & General Engineering Corp., ISGE Haryana, TX.	49 CFR 173.3, 173.304 ...	To authorize the manufacture, marking and sale of non-DOT specification cylinders (pressure vessel) for use in transporting Chlorine, Division 2.3 material (modes 1, 2).
12332–N	DOT–E 12332	Automotive Occupant Restraints Council, Lexington, KY.	49 CFR 173.166(c) & (e)	To authorize the transportation in commerce of air bag modules or seat belt pre-tensioners that have been removed from motor vehicles for disposal to be transported without required markings (mode 1).
12351–N	DOT–E 12351	Nalco/Exxon Energy Chemicals, L.P., Freeport, TX.	49 CFR 177.834 (i)(3)	To authorize an electronic monitoring system without the physical presence of an unloader within 25 feet of cargo tanks during loading operations (mode 1).
12391–N	DOT–E 12391	Airgas Mgmt., Inc., Cheyenne, WY.	49 CFR 172.203(a), 173.34(e)(16), 173.34(e)(16)(i)(A)).	To authorize the transportation in commerce of certain Division 2.1 and 2.2 gases in DOT Specification 3A or 3AA cylinders manufactured on or before December 31, 1945, and which have been retested at least every 10 years (modes 1, 2, 3, 4, 5).
12392–N	DOT–E 12392	Consani Engineering, Elsies River, SA.	49 CFR 178.245	To authorize the transportation in commerce of non-DOT specification steel portable tanks permanently fixed within ISO frames, which are similar to DOT 51 portable tanks for use in transporting all hazardous materials presently authorized (modes 1, 2, 3).
12397–N	DOT–E 12397	Astaris, LLC (formerly FMC Corp.), Philadelphia, PA.	49 CFR 172.203(a), 180.509(1)(2).	To authorize the use of an alternative requalification method for certain DOT specification 111A100W6 tank cars used to transport Class 8 hazardous materials (mode 2).
12401–N	DOT–E 12401	DG Supplies, Inc., Hamilton, NJ.	49 CFR 172.400, 172.402, 172.504, 173.150–154, 173.201–203, 173.211–213, 173.25, 175.3.	To authorize the manufacture, marking and sale of specially-designed combination packaging for use in transporting liquid and solid hazardous materials with relief from labeling and placarding requirements (modes 1, 2, 4, 5).
12405–N	DOT–E 12405	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2), 173.304(b).	To authorize an increase in filling density to the cylinder test pressure for the transportation of Division 2.1, 2.2 and 2.3 hazardous materials (modes 1, 3, 4, 5).
12413–N	DOT–E 12413	CP Industries, Inc., McKeesport, PA.	49 CFR 17.34(e)(3), 173.302(c)(2); 173.302(c)(3);, 173.302(c)(4);, 173.302(c)(5), 173.34(e), 173.34(e)(1)(i)&(ii), 173.34(e)(4), 173.34(e)(5), 173.34(e)(6), 173.34(e)(7).	To authorize acoustic emission and ultrasonic retest to DOT–3AA, 3AAX or 3T cylinders for use in transporting presently authorized hazardous materials (modes 1, 2, 3, 4).
12427–N	DOT–E 12427	Chubb Fire Ltd., England	49 CFR 173.301(j)	To authorize the transportation in commerce of non-DOT specification cylinders for use in transporting non-flammable compressed gas, Division 2.2, to UL facility for testing (mode 4).
12457–N	DOT–E 12457	Arch Chemicals, Inc., Norwalk, CN.	49 CFR 172.101(i)(3) Col. 8C.	To authorize the transportation in commerce of dry calcium hypochlorite mixture, Division 5.1, in DOT specification flexible intermediate bulk containers (mode 1).
12468–N	DOT–E 12468	Connecticut Yankee Atomic Power Co., East Hampton, CT.	49 CFR 173.403, 173.427(a)(1), 173.427(b) or (c).	To authorize the transportation in commerce of a reactor vessel containing low-level radioactive waste, Class 7 (modes 1, 2).
12474–N	DOT–E 12474	Department of Defense (DOD), Falls Church, VA.	49 CFR 171.12, 172.204, 173.301(i) & (j).	To authorize the transportation in commerce of two types of non-DOT specification compressed gas cylinders containing Division 2.2 materials (mode 1).
12481–N	DOT–E 12481	Trac Regulator Co., Inc., Mt. Vernon, NY.	49 CFR 173.306	To authorize the transportation in commerce of an actuator and valve assembly for use in transporting various classes of hazardous materials (modes 1, 2).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12491–N	DOT–E 12491	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 171.12(b)(5), SP T17.	To authorize the transportation in commerce of dichlorophenyl isocyanate, Division 6.1 in IM 101 portable tanks (modes 1, 3).
12521–N	DOT–E 12521	Airgas Inc., Madison, CT	49 CFR 173.301(j)	To authorize the transportation in commerce of non-DOT specification cylinders manufactured in the U.S. for export with valving and relief device requirements of the country that the cylinders will be exported to for use in transporting various compressed gases (mode 1).
12526–N	DOT–E 12526	Aeronex, Inc, San Diego, IL.	49 CFR 173.212, 173.213	To authorize the manufacture, marking and sale of non–DOT specification cylinders for use in transporting Division 4.1 and 4.2 hazardous materials (modes 1, 2, 3, 4).
12533–N	DOT–E 12533	Adams Healthcare Ltd., Garforth, Leeds, EN.	49 CFR 173.306(a)(3)(v)	To authorize alternative testing criteria for aerosol containers meeting DOT specification 2Q for use in transporting Division 2.1 material (modes 1, 3).
12534–N	DOT–E 12534	MODcol Corp., Sunnyvale, CA.	49 CFR 173.302, 178.602–178.606.	To authorize the manufacture, marking, sale and use of a composite package containing limited quantities of Class 3 material with fiberboard or plywood overpack (modes 1, 2, 3, 4).
12537–N	DOT–E 12537	Noranda-Dupont LLC, Wilmington, DE.	49 CFR 172.203(a), 180.509(1)(2).	To authorize an alternative retest criteria for DOT specification 111A100W tank cars used in sulfuric acid service (mode 1).
12539–N	DOT–E 12539	Edlow International Company Washington, DC.	49 CFR 173.420(a)(2)(i) ..	To authorize the one-time transportation of 19 model 30B cylinders, which deviate from the ANSI 14.1 standards, containing uranium hexafluoride, Class 7 (modes 1, 3).
12540–N	DOT–E 12540	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 178.245	To authorize the transportation in commerce of DOT 51 similar to a multi-unit tank car tank equipped with pressure relief devices for use in transporting hydrogen fluoride, anhydrous, Class 8 (modes 1, 2).
12541–N	DOT–E 12541	Rotonics Manufacturing, Inc., Gardena, CA.	49 CFR 172.101 Col 8b and 8C, 173.197.	To authorize the manufacture, marking, sale and use of a 200 gallon, high density polyethylene, rotationally molded roll on/roll off container as an outer packaging for use in transporting regulated medical waste, Division 6.2 (mode 1).
12542–N	DOT–E 12542	United States Enrichment Corporation (USEC), Bethesda, MD.	49 CFR 173.420(a)(2)(i) ..	To authorize the transportation in commerce of one model 48X cylinder, which deviated from the ANSI 14.1 standards, containing uranium hexafloride, Class 7 (modes 1, 2).
12561–N	DOT–E 12561	Rhodia Inc., Cranbury, NJ	49 CFR 172.203(a), 173.31, 179.23.	To authorize the transportation in commerce of DOT Specification 111S100W–2 tank cars that exceed the maximum gross weight limit for use in transporting Class 8 material (mode 2).
12585–N	DOT–E 12585	JCI Jones Chemicals, Barerton, OH.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an emergency B kit to prevent leaking during transportation (mode 1).
EMERGENCY EXEMPTIONS				
EE 11836–M	DOT–E 11836	Pioneer Chemical, Inc. (NACD) Member), Mesquite, TX.	49 CFR 173.203, 173.24	To authorize additional specification packagings (mode 1).
EE 12395–M	DOT–E 12395	Pennzoil Quaker State Co., Houston, TX.	49 CFR 173.306	Emergency request for modification and extension of the expiration date (mode 1).
EE 12494–N	DOT–E 12494	American Reclamation Group LLC, Anchorage, AK.	49 CFR 172.101 (col. 9) ..	Request for an emergency exemption to transport certain material by air, which is forbidden to the HMR (mode 4).
EE 12501–M	DOT–E 12501	Northland Services, Inc., Seattle, WA.	49 CFR 178.245–4(e)	Request for extension of the expiration date to permit a one-time transportation of portable tanks (mode 3).
EE 12504–N	DOT–E 12504	Carrier Corp., Research Triangle Park, NC.	49 CFR 177.834(1)(2)(i) ..	Request for an emergency exemption to use cargo hearters when transporting flammable liquids or flammable gases (mode 1).
EE 12506–N	DOT–E 12506	The Boeing Company, Huntington Beach, CA.	49 CFR 172.101	Request for an emergency exemption to transport fire extinguishers by commercial aircraft (modes 4, 5).
EE 12523–N	DOT–E 12523	US Department of Defense, Alexandria, VA.	49 CFR 173.212	Request for emergency exemption to transport a certain material in a non-spec. package (mode 1).
EE 12540–M	DOT–E 12540	Air Products and Chemicals, Allentown, PA.	49 CFR 178.245	Requesting amendment of the relief device capacity specified in the exemptions (modes 1, 2).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12545–N	DOT–E 12545	Pacific Northwest Equipment, Inc., Seattle, WA.	49 CFR not given	Request for an emergency exemption for a one-time exemption to ship 21 IM–102 tanks containing blasting agent by barge from Alaska Marine lines terminal in Seattle WA to the State of Alabama (mode 3).
EE 12546–N	DOT–E 12546	Allied Universal Corp., Miami, FL.	49 CFR 173/24	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with a ''B'' kit to prevent leakage during transportation (mode 1).
EE 12553–M	DOT–E 12553	DPC Industries, Inc., Houston, TX.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking cylinder that has been fitted with an emergency A kit to prevent leakage during transportation (mode 1).
EE 12555–N	DOT–E 12555	Airgas Intermountain, Colorado Springs, CO.	49 CFR 173.34	Request for an emergency exemption to transport a leaking cylinder that has been fitted with an emergency A Kit (mode 1).
EE 12556–N	DOT–E 12556	Florida Gas Transportation Company, Tallahassee, FL.	49 CFR 172.101	To authorize emergency transportation in commerce of natural gas in MC–331 cargo tanks (mode 1).
EE 12558–N	DOT–E 12558	JCI Jones Chemicals, Inc., Barberton, OH.	49 CFR 173.34	Authorize the shipment of a leaking ton tank container that has been fitted with an emergency B kit to prevent leakage (mode 1).
EE 12559–N	DOT–E 12559	Cook Inlet Pipe Line Co., Anchorage, AK.	49 CFR 1, 172.101	Request for an emergency exemption to exceed the quantity limitations for materials transported by cargo aircraft (mode 4).
EE 12560–N	DOT–E 12560	Phillips Alaska, Inc., Alaska, AK.	49 CFR 172.101 col. 9(b)	Request for an emergency exemption to transport hazmat by cargo air that exceed quantity limitations (mode 4).
EE 12565–N	DOT–E 12565	Allied Universal Corp. Miami, FL.	49 CFR 173.24	Request for an emergency exemption to transport a leaking container that has been fitted with an emergency B kit to prevent leakage during transportation (mode 1).
EE 12569–N	DOT–E 12569	Alaska Pacific Powder Company, Olympia, WA.	49 CFR 175.320(a)	Request for an emergency exemption to ship high explosives by air (mode 4).
EE 12570–N	DOT–E 12570	JCI Jones Chemicals, Torrance, CA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leakage during transportation (mode 1).
EE 12575–N	DOT–E 12575	Carrib Supply of St. Croix, Inc., Christiansted, VI.	49 CFR 173.318	Request for an emergency exemption to use portable tanks that meet the design criteria for an MC 338 but are not classified as cargo tanks. These portable tanks would be used to transport liquid oxygen (mode 1).
EE 12577–N	DOT–E 12577	JCI Jones Chemicals, Inc., Merrimack, NH.	49 CFR 173.24(b) etc	Request for an emergency exemption to transport a leaking tank car fitted with a B kit (mode 1).
EE 12578–N	DOT–E 12578	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b)	Emergency exemption for the one-time transportation of a leaking ton cylinder that has been fitted with an emergency A chemical kit to prevent leakage during transportation (mode 1).
EE 12579–N	DOT–E 12579	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.24(b)	Emergency exemption for a leaking cylinder with an A kit to prevent leakage (mode 1).
EE 12580–N	DOT–E 12580	Matheson-Tri-Gas East Rutherford, NJ.	49 CFR 173.301(j)	Request for an emergency exemption to use a cylinder that is not authorized in the HMR for tungsten hexafluoride (mode 1).
EE 12581–N	DOT–E 12581	Ball Aerospace & Technologies Corp., Boulder, CO.	49 CFR 173	Request for an emergency exemption to ship helium in a non-DOT specification packaging (mode 1).
EE 12582–N	DOT–E 12582	Michigan State Police, East Lansing, MI.	49 CFR 173.25, 175.85 ...	Request for an emergency exemption to authorize the transportation of first aid/trauma kits containing 2.2 gas in a passenger carrying aircraft (mode 4).
EE 12583–N	DOT–E 12583	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.24(b)	Request for an emergency exemption for a one-time transportation of a leaking ton cylinder that has been fitted with a B kit to prevent leakage during transportation. The cylinder contains Chlorine (mode 1).
EE 12584–N	DOT–E 12584	JCI Jones Chemicals, Inc., Jacksonville, FL.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an A kit to prevent leakage during transportation (mode 1).
EE 12595–N	DOT–E 12595	Marsulex, Inc., Toledo, OH.	49 CFR 172.540	Request for an emergency exemption to authorize the transportation in commerce of sulfur dioxide in a tank car using international placards for 2.3 material (mode 2).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12596–N	DOT–E 12596	Hci Worth Chemical Co., Chatanooga, TN.	49 CFR 173.24(b)	Request for emergency exemption to transport a leaking ton cylinder that has been fitted with an emergency B kit to prevent leakage (mode 1).
EE 12597–N	DOT–E 12597	Firestone Tire and Rubber Company, Savannah, GA.	49 CFR 178.245–4(e)	Request for an emergency exemption to transport anhydrous ammonia in certain DOT spec. 51 portable tanks (modes 1, 3).
EE 12598–N	DOT–E 12598	Lawrence Berkeley National Laboratory Berkely, CA.	49 CFR 173.150(b)	Request for an emergency exemption to permit packaging that are not authorized for a class 3, pkg. III material (mode 1).
EE 12601–N	DOT–E 12601	Great Lakes Chemical Corp., Indianapolis, IN.	49 CFR 172.301(c), 173.24(e), 173.226(c).	Request for emergency exemption to authorize the one-time transportation in commerce of a 6.1 material in plastic bottles that have not passed certain performance tests required by the HMR (mode 1).
EE 12602–N	DOT–E 12602	Allied Universal Corp., Maimi, FL.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking ton container fitted with an emergency B kit (mode 1).
EE 12603–N	DOT–E 12603	JCI Jones Chemical Milford, VA.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking ton container fitted with an emergency B kit to prevent leakage during transportation (mode 1).
EE 12604–N	DOT–E 12604	Allied Universal Miami, FL	49 CFR 173.23(b)	Request for an emergency exemption for a tank car fitted with a B kit (mode 1).

DENIALS

8556–M	Request by Gardner Cryogenics Lehigh Valley, PA to modify the exemption to provide for design changes of the non-DOT specification portable tank manufactured in accordance with ASME Code criteria; add a new 4830 gallon liquid helium tank design denied November 17, 2000.
9232–X	Request by U.S. Department of Defense Alexandria, VA to authorize the shipment of explosives and other hazardous materials forbidden or in quantities greater than those prescribed by commercial air carriers activated under the Civil Reserve Air Fleet during a contingency airlift or national emergency denied November 22, 2000.
9323–X	Request by U.S. Department of Defense Falls Church, VA to authorize the shipment only by the U.S. Department of Defense of gasoline and JP–4 and JP–5 fuel, Class 3 liquids, in non-DOT specification collapsible, fabric reinforced rubber drums of 500-gallon capacity denied November 22, 2000.
10880–X	Request by St. Lawrence Explosives Corp. Adams Center, NY to authorize the use of reusable, flexible Intermediate Bulk Container (IBC) type 12H3 or 13H4 conforming to Subpart N and O of Part 178 with replaced liners having a capacity not over 1000kg (2206 pounds) and top and bottom outlets, for shipment of ammonium nitrate-fuel oil mixture ANFO denied October 20, 2000.
10880–X	Request by St. Lawrence Explosives Corporation Adams Center, NY to authorize the use of reusable, flexible Intermediate Bulk Container (IBC) type 12H3 or 13H4 conforming to Subpart N and O of Part 178 with replaced liners having a capacity not over 1000kg (2206 pounds) and top and bottom outlets, for shipment of ammonium nitrate-fuel oil mixture ANFO denied October 20, 2000.
12343–N	Request by City Machine & Welding, Inc. of Amarillo, Amarillo, TX to authorize acoustic emission retesting of DOT–3AAX and 3T cylinders for use in transporting various hazardous materials classed in Division 2.1, 2.2 and 2.3 denied November 29, 2000.
12525–N	Request by ICO Worldwide, Inc. Houston, TX to authorize the transportation in commerce of a specially designed device (mobile pipe inspection unit pulled by a tractor) containing radioactive material, Type A, transported with obscured markings denied November 22, 2000.

[FR Doc. 01–32016 Filed 12–27–01; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extension public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on December 21, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	01/31/2002
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	01/31/2002
12353–N	Monson Companies, South Portland, ME	4	01/31/2002
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	01/31/2002
12406–N	Occidental Chemical Corporation, Dallas, TX	4	01/31/2002
12412–N	Great Western Chemical Company, Portland, OR	4	01/31/2002
12434–N	Salmon Air, Salmon, ID	4	01/31/2002
12440–N	Luxfer, Inc., Riverside, CA	4	01/31/2002
12456–N	Baker Hughes, Houston, TX	4	01/31/2002
12571–N	Air Products & Chemicals, Inc., Allentown, PA	4	01/31/2002
12586–N	Wilsonart International Inc., Temple, TX	4	01/31/2002
12588–N	El Dorado Chemical Co., Creve Ceour, MO	4	01/31/2002
12629–N	Western Sales & Testing of Amarillo, Inc., Amarillo, TX	4	01/31/2002
12630–N	Chemetall GmbH Gesellschaft, Langelsheim, DE	4	01/31/2002
12634–N	Norman International, Los Angeles, CA	4	01/31/2002
12648–N	Stress Engineering Services, Inc., Houston, TX	4	01/31/2002
12650–N	Coleman Powermate, Inc., Kearney, NE	4	01/31/2002
12661–N	United Parcel Service (UPS), Atlanta, GA	4	01/31/2002
12674–N	G&S Aviation, Donnelly, ID	4	01/31/2002
12690–N	Air Liquide America Corporation, Houston, TX	4	02/28/2002
12696–N	Phibro-Tech, Inc., Fort Lee, NJ	4	02/28/2002
12701–N	Fuel Cell Components & Integrators, Inc., Hauppauge, NY	4	02/28/2002
12702–N	Los Crespos Cylinders, Anasco, PR	4	01/31/2002
12706–N	Raufoss Composites AS, Raufoss, NO	4	02/28/2002
12716–N	Air Liquide America Corporation, Houston, TX	4	01/31/2002
12718–N	Weldship Corporation, Bethlehem, PA	4	01/31/2002
12724–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	02/28/2002
12741–N	Thunderbird Cylinder Inc., Phoenix, AZ	4	02/28/2002
12751–N	Defense Technology Corporation, Casper, WY	4	02/28/2002
12753–N	Praxair, Inc., Danbury, CT	4	02/28/2002
12755–N	Air Canada, Ottawa, ON	4	02/28/2002

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
4453–M	Dyno Nobel, Inc., Salt Lake City, UT	4	01/31/2002
4884–M	Matheson Tri-Gas, East Rutherford, NJ	4	01/31/2002
6805–M	Air Liquide America Corporation, Houston, TX	4	01/31/2002
7060–M	Federal Express, Memphis, TN	4	01/31/2002
7277–M	Structural Composites Industries, Pomona, CA	4	01/31/2002
7954–M	Voltaix, Inc., North Branch, NJ	4	01/31/2002
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	01/31/2002
8308–M	American Courier Express Corporation, Miramar, FL	4	01/31/2002
8554–M	Orica USA, Inc., Englewood, CO	4	01/31/2002
8554–M	Dyno Nobel, Inc., Salt Lake City, UT	4	01/31/2002
8723–M	Dyno Nobel, Inc., Salt Lake City, UT	4	01/31/2002
9401–M	Societe Nationale de Wagon-Reservoirs, 79009 Paris, FR	4	02/28/2002
9421–M	Taylor-Wharton (Harsco Corporation), Harrisburg, PA	4	01/31/2002
10019–M	Structural Composites Industries, Pomona, CA	4	02/28/2002
10832–M	Autoliv ASP, Inc., Ogden, UT	4	02/28/2002
11244–M	Aerospace Design & Development, Inc., Longmont, CO	4	01/31/2002
11379–M	TRW Automotive Occupant Safety Systems, Washington, MI	4	02/28/2002
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	01/31/2002
11769–M	Great Western Chemical Company, Portland, OR	4	01/31/2002
11769–M	Great Western Chemical Company, Portland, OR	4	02/28/2002
11769–M	Hydrite Chemical Company, Brookfield, WI	4	01/31/2002
11911–M	Transfer Flow, Inc., Chico, CA	4	01/31/2002
12065–M	Petrolab Company, Latham, NY	4	02/28/2002
12084–M	Honeywell International, Inc., Morristown, NJ	4	01/31/2002
12449–M	Chlorine Service Company, Inc., Kingwood, TX	4	02/28/2002

MODIFICATIONS TO EXEMPTIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
12676–M	Environmental Management, Inc., Guthrie, OK	4	02/28/2002

[FR Doc. 01–32017 Filed 12–27–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to discuss the outcome of the twentieth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) held December 5–11, 2001 in Geneva, Switzerland.

DATES: January 16, 2002, 9:30 a.m.–12 p.m., Room 3328.

ADDRESSES: The meeting will be held at DOT Headquarters, Nassif Building, Room 3328, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bob Richard, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting will be to discuss outcomes of proposals presented to the twentieth session of UNSCOE. Topics to be covered during the public meeting will include (1) Criteria for Environmentally Hazardous Substances, (2) Intermodal requirements for the transport of solids in bulk containers, (3) Harmonized requirements for compressed gas cylinders, (4) Portable tank requirements, (5) Classification of individual substances, (6) Requirements for packagings used to transport hazardous materials, (7) Requirements for infectious substances, and (8) Hazard communication requirements.

The public is invited to attend without prior information.

Documents

Copies of documents for the UNSCOE meeting may be obtained by downloading hem from the United Nations Transport Division web site at *http://www.unece.org/trans/main/dgdb/dgsubc/c3doc_2001.html.* Information concerning UN dangerous goods meetings including agendas can be downloaded at *http://www.unece.org/trans/main/dgdb/dgsubc/c3.html.* These sites may also be accessed through the international section of RSPA's Hazardous Materials Safety website at *http://hazmat.dot.gov/intstandards.htm.* RSPA's site provides information regarding the UNSCOE and the Globally Harmonized System of Classification and Labeling for Chemicals, a summary of decisions taken at the 21st session of the UN Committee of Experts, meeting dates and summary of the primary topics which are to be addressed in the 2001–2002 biennium.

Issued in Washington, DC, on December 21, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–32011 Filed 12–27–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34129]

RailAmerica, Inc.—Control Exemption—StatesRail Acquisition Corp. and StatesRail, Inc.

RailAmerica, Inc. (RailAmerica), a noncarrier, has filed a verified notice of exemption to continue in control of StatesRail Acquisition Corp. (Acquisition), and to obtain control of StatesRail, Inc. (StatesRail), a holding company that controls Arizona Eastern Railway Company, Eastern Alabama Railway, Kyle Railroad Company, San Joaquin Valley Railroad Company, and SWKR Operating Co., all Class III railroads, upon the acquisition of all of the stock of StatesRail by Acquisition.

The transaction is scheduled to be consummated on or after January 1, 2002.

On November 15, 2001, RailAmerica also filed a motion for protective order under CFR 1104.14, and the motion was granted.[1]

RailAmerica states that, as of its filing of the notice of exemption, it controls one Class II and 23 Class III rail common carriers operating in 23 states.[2] However, in *ParkSierra, infra,* RailAmerica is acquiring control of a second Class II carrier.

RailAmerica also states that: (i) These railroads do not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier.[3] Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because RailAmerica will control more than one Class II rail carrier, the transaction will be made subject to the labor protection conditions described in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d)

[1] *See RailAmerica, Inc.—Control Exemption—StatesRail Acquisition Corp. and StatesRail, Inc.,* STB Finance Docket No. 34129 (STB served Dec. 5, 2001).

[2] On December 7, 2001, RailAmerica also filed: (1) A notice of exemption in STB Finance Docket No. 34128, *RailAmerica, Inc.—Control Exemption—New StatesRail Holdings, Inc. and Alabama & Gulf Coast Railway L.L.C.,* to acquire from StatesRail, L.L.C., all of the outstanding stock of New StatesRail Holdings, Inc. (New StatesRail), and through New StatesRail to acquire control of its wholly owned subsidiary, the Alabama & Gulf Coast Railway, L.L.C.; and (2) a petition for exemption in STB Finance Docket No. 34130, *RailAmerica, Inc.—Control Exemption—Kiamichi Holdings, Inc. and Kiamichi Railroad L.L.C.,* to acquire control of Kiamichi Holdings, Inc., and its subsidiary Kiamichi Railroad L.L.C.

[3] RailAmerica has invoked the Board's class exemption procedures to acquire control of Class II rail carrier ParkSierra Corp. (ParkSierra) in *RailAmerica, Inc.—Control Exemption—ParkSierra Acquisition Corp. and ParkSierra Corp.,* STB Finance Docket No. 34100 (STB served Dec. 20, 2001) (*ParkSierra*). RailAmerica indicates that ParkSierra's rail properties do not connect with those of Alabama & Gulf Coast or those of RailAmerica's other rail subsidiaries.

may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34129, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on (1) Gary A. Laakso, Esq., 5300 Broken Sound Blvd., NW., Second Floor, Boca Raton, FL 33487, and (2) Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: December 20, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–32008 Filed 12–27–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34128]

RailAmerica, Inc.-Control Exemption-New StatesRail Holdings, Inc. and Alabama & Gulf Coast Railway L.L.C.[1]

RailAmerica, Inc. (RailAmerica), a noncarrier, has filed a verified notice of exemption to acquire from StatesRail, L.L.C. (StatesRail) all of the outstanding stock of New StatesRail Holdings, Inc. (New StatesRail), and, through New StatesRail, to acquire control of its wholly owned subsidiary, the Alabama & Gulf Coast Railway, L.L.C. (Alabama & Gulf Coast), a Class III carrier.

The transaction is scheduled to be consummated on or after January 1, 2002.

On November 15, 2001, RailAmerica also filed a motion for protective order under CFR 1104.14, and the motion was granted.[2]

RailAmerica states that, as of its filing of the notice of exemption, it controls one Class II and 23 Class III rail common carriers operating in 23 states.[3] However, in *ParkSierra, infra,* RailAmerica is acquiring control of a second Class II carrier.

RailAmerica also states that: (i) these railroads do not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier.[4] Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because RailAmerica will control more than one Class II rail carrier, the transaction will be made subject to the labor protection conditions described in *New York Dock Ry.-Control-Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34128, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on (1) Gary A. Laakso, Esq., 5300 Broken Sound Blvd. NW., Second Floor, Boca Raton, FL 33487, and (2) Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Website at *www.stb.dot.gov.*

Decided: December 20, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–32009 Filed 12–27–01; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 5, 2001, a protective order was issued in this proceeding. The title reflected the expected participation of West Texas and Lubbock Railroad Company, Inc. (West Texas). Because West Texas will not, in fact, be a party to the transaction, the above title has been revised to reflect that fact.

[2] *See RailAmerica, Inc. and West Texas and Lubbock Railroad Company, Inc.-Control Exemption-New StatesRail Holdings, Inc. and Alabama & Gulf Coast Railway L.L.C.,* STB Finance Docket No. 34128 (STB served Dec. 5, 2001).

[3] On December 7, 2001, RailAmerica also filed: (1) a notice of exemption in STB Finance Docket No. 34129, *RailAmerica, Inc.-Control Exemption-StatesRail Acquisition Corp. and StatesRail, Inc.,* to continue in control of StatesRail Acquisition Corp. (Acquisition), and to obtain control of StatesRail, a holding company that controls Arizona Eastern Railway Company, Eastern Alabama Railway, Kyle Railroad Company, San Joaquin Valley Railroad Company, and SWKR Operating Co., all Class III railroads, upon the acquisition of all of the stock of StatesRail by Acquisition; and (2) a petition for exemption in STB Finance Docket No. 34130, *RailAmerica, Inc.-Control Exemption-Kiamichi Holdings, Inc. and Kiamichi Railroad L.L.C.,* to acquire control of Kiamichi Holdings, Inc., and its subsidiary Kiamichi Railroad L.L.C.

[4] RailAmerica has invoked the Board's class exemption procedures to acquire control of Class II rail carrier ParkSierra Corp. (ParkSierra) in *RailAmerica, Inc.-Control Exemption-ParkSierra Acquisition Corp. and ParkSierra Corp.,* STB Finance Docket No. 34100 (STB served Dec. 20, 2001) (*ParkSierra*). RailAmerica indicates that ParkSierra's rail properties do not connect with those of Alabama & Gulf Coast or those of RailAmerica's other rail subsidiaries.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 390X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—Between Loving and Pecos Junction, NM, and Between Pecos Junction, NM, and Rustler Springs, TX

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a line of railroad between BNSF milepost 196.00 near Loving, NM, and milepost 217.20 near Pecos Junction, NM, and between milepost 0.00 near Pecos Junction, NM, and milepost 25.34 near Rustler Springs, TX, a total distance of 46.54 miles. The line traverses United States Postal Service Zip Codes 88256, 88263, and 79855.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government agency acting on behalf of such user) regarding cessation of service over the line is either pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial

revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 29, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 9, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 22, 2002, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 4, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by December 28, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Website at *www.stb.dot.gov.*

Decided: December 18, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–31767 Filed 12–27–01; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–2001–11069]

Reports of Motor Carriers; Notice of Requests for Exemptions From Public Release; Request for Comments

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: This Notice announces BTS' receipt of exemption requests from the motor carriers listed below and invites public comments on the exemption requests. Class I and Class II for-hire motor carriers of property and household goods, with gross annual operating revenue of $3 million or more, are required to file annual reports with the BTS and Class I motor carriers must also file quarterly reports. As provided by statute, carriers may request that their reports be withheld from public release. BTS has opened a public docket and is inviting comments on the exemption requests from motor carriers listed below.

DATES: Comments must be submitted by February 26, 2002.

ADDRESSES: Send comments to the U. S. Department of Transportation, Dockets Management System (DMS). You may submit your comments by fax, Internet, in person or via the U.S. mail to the Docket Clerk, Docket No. BTS–2001–11069, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251. If you have provided any correspondence related to any exemption request listed below, please call (202) 366–5685 to verify receipt at U.S. DOT.

If you wish to file comments using the Internet, you may use the DOT DMS website at *http://dms.dot.gov.* Please follow the online instructions for submitting an electronic comment. Comments should identify the docket number and be submitted in duplicate. If you would like the Department to acknowledge receipt of your comments, you must submit a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–2001–11069. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Russell B. Capelle, Jr., K–13, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–5685; fax: (202) 366–3364; e-mail: *russ.capelle@bts.gov* or Robert A. Monniere, K–2, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–5498; fax: (202) 366–3640; e-mail: *robert.monniere@bts.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 14123 and its implementing regulations at 49 CFR part 1420, BTS collects financial and operating information from for-hire motor carriers of property and household goods. The data are collected on annual Form M, filed by Class I and Class II carriers, and quarterly Form QFR, filed only by Class I carriers. The data are used by the Department of Transportation, other federal agencies, motor carriers, shippers, industry analysts, labor unions, segments of the insurance industry, investment analysts, and the consultants and data vendors that support these users. Among the uses of the data are: (1) Developing financial and operating performance indicators to better measure the trucking industry and the motor carriers' role in the economy; (2) Implementing performance-based government policies; (3) Developing benchmark data for competitive analysis of trucking companies and the basis for industry policies; and (4) Research and analysis by educational institutions.

Generally, all data are made publicly available. A motor carrier can, however, request that its report be withheld from public release, as provided for by statute, 49 U.S.C. 14123(c)(2), and its implementing regulations, 49 CFR

1420.9. BTS will grant a request upon a proper showing that the carrier is not a publicly held corporation or that the carrier is not subject to financial reporting requirements of the Securities and Exchange Commission, and that the exemption is necessary to avoid substantial competitive harm and to avoid the disclosure of information that qualifies as trade secret or privileged or confidential information under 5 U.S.C. 552(b)(4). The carrier must submit a written request containing supporting information. The request must be received or postmarked by the report's due date unless there are extenuating circumstances. Requests covering the quarterly reports must be received by the due date of the annual report that relates to the prior year.

Motor carriers are reminded that an exemption from public release is valid for a period of three years from the date the report was due to BTS, 49 CFR 1420.9(g). After a date three years from the report's due date, unless otherwise required by law, BTS will make these reports available to the public.

In accordance with our regulations, after the due date of each annual report, we will publish a notice in the **Federal Register** requesting comments on the requests we have received for an exemption from public release. After considering the merits of each request and any public comments, we will make a decision to grant or deny each exemption request. While a decision is pending, we will not publicly release the motor carrier's annual and/or quarterly report(s), except as allowed under 49 CFR 1420.10(c).

II. Request for Comments

BTS invites comments on the following requests for exemption from public release. These requests cover the 1999 & 2000 annual reports and some also cover the 2000 & 2001 quarterly reports. The comments should be made within the context of the governing regulations at 49 CFR 1420.9. For additional information concerning these regulations, the public is encouraged to review the BTS final rule published in March 23, 1999 edition of the **Federal Register** (64 FR 13916).

The following motor carriers have submitted a request for an exemption from public release and we invite your comments:

Aulick Leasing Corp. (MC# 167541)
B & T Express, Inc. (MC# 194598)
Barr Transportation Corp. (MC# 141335)
Bernard D. Harner & Son, Inc. (MC# 142525)
Bullet Freight System, Inc. (MC# 240746)
C.R. England, Inc. (MC# 124679)
CZ Cartage, Inc. (MC# 272644)
Central States Trucking Co. (MC# 152337)
Central Trucking, Inc. (MC# 155550)
Chickasaw Container Services, Inc. (MC# 176391)
Chuck Foster Trucking, Inc. (MC# 252061)
Comcar Industries, Inc. and its six affiliated companies *
* Coastal Transport, Inc. (MC# 121654)
* Commercial Carrier, Corp. (MC# 115491)
* CTL Distribution, Inc. (MC# 129326)
* MD Transport Systems, Inc. (MC# 136123)
* Midwest Coast Transport, Inc. (MC# 111812)
* Willis Shaw Express, Inc. (MC# 117119)
Coosada Trucking Co., Inc. (MC# 183165)
Cowan Systems, LLC (MC# 271882)
Crewe Transfer, Inc. (MC# 36222)
D & A Truck Line, Inc. (MC# 147545)
Ee-Jay Motor Transports, Inc. (MC# 119422)
H.O. Wolding, Inc. (MC# 142310)
Harry Owen Trucking, Inc. (MC# 160454)
Harvey D. Bailey, Inc. d/b/a Cross Country Cartage (MC# 190669)
Hartwick & Hand, Inc. (MC# 197217)
Hornady Truck Line, Inc. (MC# 121664)
Illinois Armored Car Corporation d/b/a United Armored Services (MC# 157414)
Indiana Western Express (MC# 212622)
Industrial Transfer & Storage, Inc. (MC# 183132)
J & S Transport, Inc. (MC# 178215)
J L J Trucking, Inc. (MC# 200833)
Laris Shelman & Sons Trucking (MC# 222645)
Laura Kopetsky Tri-Ax, Inc. (MC# 259667)
Martin Transport, Inc. (MC# 164594)
McLeod, Inc. (MC# 239540)
Olson Carriers, Inc. (MC# 173716)
Riverton Truckers, Inc. (MC# 250963)
S-J Transportation Company (MC# 150546)
Schneider National and its five affiliated companies *
* Schneider National Carriers, Inc. (MC# 133655)
* Schneider National Bulk Carriers, Inc. (MC# 143594)
* Schneider Specialized Carriers, Inc. (MC# 113855)
* Schneider Tank Lines, Inc. (MC# 110988)
* Schneider Transport, Inc. (MC# 051146)
Security Armored Car Service, Inc. (MC# 134009)
Shelton Trucking Service, Inc. (MC# 124887)
Southern Pride Trucking Company, Inc. (MC# 149343)
T & M Express, Inc. (MC# 269387)
Thomas H. Ireland, Inc. (MC# 244166)
Transportation Services, Inc. (MC# 147039)
Truck Air of Carolinas, Inc. (MC# 167209)
W-H Transportation Co., Inc. (MC# 146329)
Wesco, Inc. (MC# 152643)

If you wish to read the exemption requests and the comments that are submitted in response to this Notice, you must use the DOT Dockets Management System. The DMS is located at the Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Internet users can access the DMS at *http://dms.dot.gov.* Please follow the instructions online for more information and help. You must also use the DMS if you wish to comment on one or more exemption requests. Please follow the instructions listed above under the section **ADDRESSES.**

Russell B. Capelle, Jr.,

Assistant BTS Director for Motor Carrier Information.

[FR Doc. 01–32023 Filed 12–27–01; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 28, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0098.
Form Number: ATF F 5520.2.
Recordkeeping Requirement ID Number: ATF REC 5520/1.

Type of Review: Extension.

Title: Annual Report of Concentrate Manufacturers and Usual and Customary Business Records—Volatile Fruit-Flavor Concentrate.

Description: Manufacturers of volatile fruit-flavor concentrate must provide reports as necessary to insure the protection of the revenue. The report accounts for all concentrates manufactured, removed, or treated so as to be unfit for beverage use. The information is required to verify that alcohol is not being diverted thereby jeopardizing tax revenues.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 91.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 30 hours.

OMB Number: 1512–0532.

Recordkeeping Requirement ID Number: ATF REC 5210/13.

Type of Review: Extension.

Title: Marks and Notices on Packages of Tobacco Products.

Description: ATF requires that tobacco products be identified by statements of information on packages, cases and containers of tobacco products. ATF uses this information to validate the receipt of excise tax revenue, the determination of tax liability and the verification of claims.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 120.

Estimated Burden Hours Per Recordkeeper: 0 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0546.

Form Number: None.

Type of Review: Extension.

Title: Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

Description: This letter is used by a law enforcement officer to purchase handguns to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the firearm is to be used in the official duties of the officer and that he/she has not been convicted of a misdemeanor crime of domestic violence.

Respondents: State, Local or Tribal Government.

Estimated Number of Recordkeepers: 50,000.

Estimated Burden Hours Per Recordkeeper: 5 seconds.

Frequency of Response: Other (5 years).

Estimated Total Recordkeeping Burden: 389 hours.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 01–31886 Filed 12–27–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2002 and ending on June 30, 2002 the prompt payment interest rate is 5.500 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. A copy of this Notice will be available to download from *http://www.publicdebt.treas.gov*.

DATES: This notice announces the applicable interest rate for the January 1, 2002 to June 30, 2002 period.

FOR FURTHER INFORMATION CONTACT: Frank Dunn, Manager, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 480–5170; Eleanor Farrar, Team Leader, Borrowings Accounting Team, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5166; Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–8692; or Mary C. Schaffer, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–8685.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971, section 2, Pub. L. 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978, section 12, Pub. L. 95–563, 92 Stat. 2389 and indirectly, the Prompt Payment Act of 1982, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury for the Renegotiation Board under Pub. L. 92–41.

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable, for the period beginning January 1, 2002 and ending on June 30, 2002, is 5.500 per centum per annum. This rate is determined pursuant to the above-mentioned sections for the purpose of said sections.

Dated: December 20, 2001.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 01–31893 Filed 12–27–01; 8:45 am]

BILLING CODE 4810–39–M

Corrections

Federal Register

Vol. 66, No. 249

Friday, December 28, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

Correction

In notice document 01–31212 beginning on page 65513 in the issue of December 19, 2001, make the following correction:

On page 65513, in the third column, under the heading ''**DATES**'', ''December 19, 2001'' should read ''February 19, 2002''.

[FR Doc. C1–31212 Filed 12–27–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,

December 28, 2001

Part II

Social Security Administration

20 CFR Part 411

The Ticket to Work and Self-Sufficiency Program; Final Rule

Request for Public Suggestions on Ways to Support Youth With Disability in Transition to Adulthood; Notice

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 411

RIN 0960–AF11

The Ticket to Work and Self-Sufficiency Program

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are publishing final regulations implementing the Ticket to Work and Self-Sufficiency Program (Ticket to Work program) authorized by the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work program provides beneficiaries with disabilities with expanded options for access to employment services, vocational rehabilitation services, or other support services. We will pay the providers of those services after the beneficiaries achieve certain levels of work.

DATES: These regulations are effective January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, E-mail to *regulations@ssa.gov,* or telephone (410) 965–3632 or TTY (410) 966–5609 for information about these regulations. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, SSA Online, at *www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Organization on Disability/Harris Survey of 1998 found that only 29 percent of individuals with disabilities were working full- or part-time. From calendar year 1986 to calendar year 1999, the number of individuals receiving disability benefits rose 80 percent, with about half receiving Social Security disability benefits and half Supplemental Security Income (SSI) benefits. Among the factors contributing to this increase were outreach efforts of the Social Security Administration (SSA) and the aging of the work force. The Federal government spent $51.3 billion on Social Security disability benefits in calendar year 1999, and $22.9 billion on SSI. Many States use State funds to supplement the benefits of SSI beneficiaries.

According to the U.S. General Accounting Office, less than one percent of Social Security disability and SSI beneficiaries leave the Social Security and SSI rolls each year as a result of paid employment. Of those who leave, about one-third return within three years. If just one-half of one percent of the current Social Security disability and SSI beneficiaries were to cease receiving benefits as a result of engaging in self-supporting employment, savings in cash benefits would total $3.5 billion over the work-life of those individuals.

These final regulations are intended to expand the options available for Social Security disability beneficiaries and disabled or blind SSI beneficiaries to access vocational rehabilitation (VR) services, employment services, and other support services that are necessary for such beneficiaries to obtain, regain or maintain employment that reduces their dependency on cash benefits. We expect that the expansion of these options and the creation of new work incentives in the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170) will remove some of the disincentives that many beneficiaries with disabilities face when they attempt to work or, if already working, continue working or increase their work effort. If more beneficiaries with disabilities engage in self-supporting employment, the net result will be a reduction in the Social Security and SSI disability rolls and savings to the Social Security Trust Fund and general revenues.

Ticket to Work and Work Incentives Improvement Act of 1999

On December 17, 1999, the *Ticket to Work and Work Incentives Improvement Act of 1999* (Public Law 106–170) became law.

In section 2(b) of Public Law 106–170, the Congress states that this legislation has the following four basic purposes:

—To provide health care and employment preparation and placement services to individuals with disabilities that will enable those individuals to reduce their dependence on cash benefit programs.

—To encourage States to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment.

—To provide individuals with disabilities the option of maintaining Medicare coverage while working.

—To establish a ''Ticket to Work and Self-Sufficiency Program'' that allows Social Security disability and disabled or blind SSI beneficiaries to seek the employment services, vocational rehabilitation services, and other support services needed to obtain, regain, or maintain employment and reduce their dependence on cash benefit programs.

Section 101(a) of Public Law 106–170 amended Part A of title XI of the Social Security Act (the Act) by adding a new section 1148, The Ticket to Work and Self-Sufficiency Program (Ticket to Work program). The purpose of the Ticket to Work program is to expand the universe of service providers available to beneficiaries with disabilities who are seeking employment services, vocational rehabilitation services, and other support services to assist them in obtaining, regaining and maintaining self-supporting employment.

The Social Security Administration is required to develop the regulations necessary to implement section 1148 of the Act, as well as certain other amendments to the Act made by Public Law 106–170, and to provide details regarding the Ticket to Work program. Section 101(e) of Public Law 106–170 requires the Commissioner of Social Security (the Commissioner) to prescribe such regulations as are necessary to implement the amendments made by section 101. We are prescribing these regulations to address a number of areas where specific policy decisions were left to the discretion of the Commissioner.

Under the Ticket to Work program, the Commissioner may issue tickets to Social Security disability beneficiaries and disabled and blind SSI beneficiaries. Each beneficiary will have the option of using his or her ticket to obtain services from a provider known as an employment network (EN). The beneficiary will choose the EN, and the EN will provide employment services, vocational rehabilitation services, and other support services to assist the beneficiary in obtaining, regaining and maintaining self-supporting employment. ENs will also be able to choose whom they serve. Beneficiaries issued a ticket also will have the option of taking the ticket to their State vocational rehabilitation agency for services.

The Commissioner's intent in publishing these final regulations for the Ticket to Work program is to allow service providers that have traditionally provided employment services, vocational rehabilitation services and other support services, as well as other types of entities, to qualify as ENs and serve beneficiaries with disabilities under the program. The expansion of options available to obtain these services will provide beneficiaries with real choices in getting the services they

need to obtain, regain, or maintain employment.

Public Education Forums and Conferences

Immediately following passage of Public Law 106–170, we began working with the U.S. Departments of Health and Human Services, Education, and Labor, as well as the Presidential Task Force on the Employment of Adults with Disabilities, the President's Committee on Employment of People with Disabilities, and the National Council on Disability. These Federal partners joined together to plan and conduct a series of public education forums. The purpose of the forums was to increase the awareness of public disability programs and programs designed to help individuals with disabilities start or return to work among individuals with disabilities, their families and representatives, service providers, advocates and State agencies. The forums focused on Federal and State employment-related policies and programs for people with disabilities.

Forums were held in eleven major cities across the country. Those cities were Baltimore, Maryland (December 12, 1999); Kansas City, Missouri (February 2, 2000); Durham, North Carolina (March 9, 2000); Phoenix, Arizona (March 30, 2000); New York, New York (April 6, 2000); Austin, Texas (May 17, 2000); Seattle, Washington (June 13, 2000); Worcester, Massachusetts (June 26, 2000); Chicago, Illinois (August 1, 2000); Harrisburg, Pennsylvania (August 15, 2000); and Denver, Colorado (September 13–14, 2000).

Representatives from many national and community-based organizations participated in these forums, including the SSI Coalition, Virginia Commonwealth University, Disability Rights Education and Defense Fund, the National Brain Injury Association, Consortium for Citizens with Disabilities, Robert Wood Johnson Foundation, National Council on Independent Living, Capstone Group, as well as State representatives from the Developmental Disabilities Councils, the State Independent Living Councils, and the Governors' Committees on Employment of People with Disabilities.

The forums provided participants with both information and an opportunity for discussion. Topics included: SSA customer services and work incentives; State health care systems and models; and employment initiatives of the Departments of Education, Labor, and Health and Human Services.

The forums were also used as an opportunity to share information about Public Law 106–170 and conduct exploratory discussions about policy issues relating to the implementation of the provisions in the legislation that were left to the Commissioner to interpret. New models where State and local systems are working together to serve their common customers with disabilities were highlighted.

SSA representatives were also involved in meetings and conferences on the national, regional, State, and local levels. These included SSA-sponsored forums in Chicago, San Francisco, Dallas, Denver, and Philadelphia conducted in January and February 2000, which focused on the Ticket to Work program. At these meetings and conferences, SSA representatives made presentations on Public Law 106–170, facilitating discussion and obtaining recommendations that were considered in developing the provisions of the Ticket to Work program that were addressed in our proposed rules.

SSA's Programs for Rehabilitation Services Prior to Implementation of the Ticket to Work Program

In titles II and XVI of the Social Security Act, Congress provided that we promptly refer individuals applying for or determined eligible for Social Security disability benefits or SSI benefits based on disability or blindness to State vocational rehabilitation (VR) agencies for necessary rehabilitation services. Under the statute and by regulations, if a State VR agency does not serve a beneficiary whom we referred, we may use other public or private agencies, organizations, institutions or individuals to provide services. Under our regulations, these other providers of services are known as alternate participants. We are authorized under the Act to pay State VR agencies and alternate participants for the reasonable and necessary costs of services provided to Social Security disability beneficiaries and disabled and blind SSI beneficiaries under specific circumstances. The most frequent circumstance permitting payment under the Act is when the services provided result in the beneficiary performing substantial gainful activity (SGA) for a period of at least nine continuous months. These programs for referral and reimbursement for VR services are provided for in sections 222(a) and (d) and sections 1615(a), (d), and (e) of the Act.

Section 101(b) of Public Law 106–170 makes a number of conforming amendments to the Act, which require amendments to existing regulations that implement these statutory provisions. As we gradually implement the Ticket to Work program in States selected by the Commissioner, the provisions of the Act for referring beneficiaries to State VR agencies will cease to be in effect in those States as provided in sections 101(b), (c) and (d) of Public Law 106–170. Additionally, the use of alternate participants under the title II and title XVI vocational rehabilitation reimbursement programs will be phased out in the States as the Ticket to Work program is implemented, as authorized under section 101(d)(5) of Public Law 106–170.

Section 101(b) of Public Law 106–170 also repealed sections 222(b) and 1615(c) of the Act, under which the Commissioner was authorized to impose sanctions (i.e. make deductions from Social Security disability benefits or suspend SSI benefits) with respect to any beneficiary who refused, without good cause, to accept rehabilitation services made available by a State VR agency or an alternate participant.

The proposed rules to implement these statutory changes will be published in the **Federal Register** at a later date.

Section 101(b) of Public Law 106–170 also amends sections 225(b) and 1631(a)(6) of the Act under which SSA is authorized to continue disability or blindness benefit payments to individuals who recover medically while participating in a program of vocational rehabilitation services approved by the Commissioner if the Commissioner determines that continuation in or completion of the program will increase the likelihood that the individual will be permanently removed from the disability or blindness benefit rolls. Section 101(b) of Public Law 106–170 amends these sections of the Act by striking ''a program of vocational rehabilitation services'' and inserting ''a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1148 or another program of vocational rehabilitation services, employment services, or other support services''. The proposed rules to implement this expanded definition will be published in the **Federal Register** at a later date.

We will also publish at a later date in the **Federal Register** the rules for implementing section 112 of Public Law 106–170, Expedited Reinstatement of Disability Benefits.

General Goals of the Ticket to Work Program

The Ticket to Work program will enhance the range of choices available

to Social Security disability and disabled and blind SSI beneficiaries when they are seeking employment services, VR services and other support services to obtain, regain or maintain self-supporting employment. The coordinated and interrelated public policy embodied in various provisions of Public Law 106–170 will remove several disincentives to employment faced by beneficiaries with disabilities. The Ticket to Work program will increase beneficiaries' access to public and private providers to obtain employment services, VR services, and other support services. As a result, the Ticket to Work program, together with other provisions of Public Law 106–170, should increase the number of beneficiaries who increase their work effort and leave the Social Security or SSI disability rolls due to income from employment.

In addition to providing the increased opportunity for these beneficiaries to obtain services when they seek employment, Public Law 106–170 may result in substantial savings for the Federal government and State governments. Not only should there be an increase in the number of beneficiaries leaving the Social Security and SSI disability rolls due to work or earnings, some individuals will secure work with employers who offer group health coverage, thereby reducing Medicaid and Medicare expenses. Earned income should also yield tax receipts while reducing expenses in Social Security disability and disabled and blind SSI benefits, food stamps, HUD housing rent subsidies, and certain veterans benefits. Improved employment rates of individuals with disabilities should increase the independence of such individuals and strengthen our communities and workforce.

Ticket to Work Program

Section 1148 of the Act, which was added by section 101(a) of Public Law 106–170, directs the Commissioner of Social Security to establish a Ticket to Work and Self-Sufficiency Program. Section 1148(b) of the Act authorizes the Commissioner to issue a ticket to disabled beneficiaries. Beneficiaries may choose among public or private service providers that have been approved by SSA to function as ENs under the program to obtain employment services, vocational rehabilitation services, or other support services to assist them in obtaining, regaining or maintaining employment that will reduce their dependence on cash benefits. Beneficiaries will also have the option of choosing to obtain services from their State VR agency. The overall purpose of the Ticket to Work program is to expand the universe of options available to beneficiaries with disabilities for obtaining such services.

Section 101(d) of Public Law 106–170 requires the Commissioner to implement the Ticket to Work program in graduated phases at phase-in sites selected by the Commissioner. This is to permit a thorough evaluation of the program and ensure that the most effective methods are in place for full implementation of the program. This section also provides that the Ticket to Work program should be available in every State not later than 2004.

SSA has decided that the Ticket to Work program will be implemented in the following manner:

During Phase I of the Ticket to Work program, we will distribute tickets to eligible beneficiaries in the following States: Arizona, Colorado, Delaware, Florida, Illinois, Iowa, Massachusetts, New York, Oklahoma, Oregon, South Carolina, Vermont and Wisconsin. We intend to implement this phase upon the effective date of these regulations.

During Phase II of the Ticket to Work program, we will distribute tickets to eligible beneficiaries in the following States: Alaska, Arkansas, Connecticut, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, South Dakota, Tennessee, Virginia and in the District of Columbia. We intend to implement this phase in calendar year 2002.

During Phase III of the Ticket to Work program, we will distribute tickets to eligible beneficiaries in the following States: Alabama, California, Hawaii, Idaho, Maine, Maryland, Minnesota, Nebraska, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Washington, West Virginia, Wyoming, as well as in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the Virgin Islands. We intend to implement this phase in calendar year 2003.

Section 1148(d)(1) of the Act authorizes the Commissioner to conduct a competitive bidding process and enter into an agreement with one or more organizations to serve as a Program Manager (PM) to assist SSA in administering the Ticket to Work program.

The PM will recruit and recommend for selection by the Commissioner ENs for service under the program; monitor all ENs serving in the geographic areas covered under the PM's agreement to ensure that adequate choices of services are made available to beneficiaries; assure that payment by the Commissioner to ENs is warranted; facilitate access by beneficiaries to ENs; ensure the availability of adequate services; and ensure that sufficient ENs are available and that each beneficiary under the program has reasonable access to employment services, vocational rehabilitation services, and other support services.

Section 1148(d)(4) of the Act directs the Commissioner to select and enter into agreements with service providers that are willing to function as ENs and assume responsibility for the coordination and delivery of employment services, vocational rehabilitation services, and other support services to beneficiaries with disabilities under the Ticket to Work program. A beneficiary with a ticket may assign his or her ticket to any provider that is serving as an EN under the Ticket to Work program and is willing to accept the assignment. Beneficiaries who are issued a ticket also will have the option of taking the ticket to their State VR agency for services.

Section 101(e) of Public Law 106–170 requires the Commissioner to prescribe such regulations as are necessary to implement the amendments made by section 101 of this legislation. These final regulations address those areas which must be regulated in order to implement the Ticket to Work program. Additional regulations necessary for the ongoing implementation of the program will be published as proposed rules in the **Federal Register** at a later date. For example, proposed performance measures to be used in conducting periodic reviews as necessary to provide for effective quality assurance in the provision of services by ENs will need to be developed and published in the **Federal Register** for comment.

Notice of Proposed Rulemaking

We published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 28, 2000 (65 FR 82844) proposing rules to implement the Ticket to Work program. We provided the public 60 days to submit comments. The comment period closed February 26, 2001. We received comments from over 400 commenters. We discuss the comments we received on the NPRM and provide our responses to the comments later in this preamble under ''Public Comments on the Notice of Proposed Rulemaking.'' A summary of the public comments is available on the Internet at the SSA Office of Employment Support Programs' Work Site at http://www.ssa.gov/work.

As we explain below, in these final regulations, we are making a number of changes from the proposed rules in response to public comments. As suggested in a number of these comments, we are also making other changes in the interest of improved clarity, consistency, and improved organization.

Final Regulations

We are adding a new part 411 to chapter III of title 20 of the Code of Federal Regulations to provide the regulations for the Ticket to Work program. The new part 411 is divided into the following subparts.

Subpart A—Introduction

Subpart A of these regulations provides an introduction to the regulations in the new part 411. Section 411.100 provides an overview of the regulations in part 411. Section 411.105 describes the purpose of the Ticket to Work program. Section 411.110 explains that the Ticket to Work program will be implemented in graduated phases in sites around the country as required by section 101(d) of Public Law 106–170. Section 411.115 provides definitions of terms used in part 411. In the final rules, we have reorganized the definitions of terms in § 411.115 to place the terms in alphabetical order. In final § 411.115(m) (proposed § 411.115(i)), we have clarified the definition of State vocational rehabilitation agency to indicate that in those States that have one agency that provides VR services to non-blind individuals and another agency that provides services to blind individuals, the term ''state vocational rehabilitation agency'' or ''state VR agency'' refers to either State agency. In addition, we have expanded § 411.115 in the final rules to provide definitions of the terms ''employment network'' or ''EN,'' ''individual work plan'' or ''IWP,'' ''individualized plan for employment'' or ''IPE,'' ''program manager'' or ''PM,'' and ''ticket.''

Subpart B—Tickets Under the Ticket to Work Program

Subpart B of these regulations describes what a ticket is and explains who is eligible to receive a ticket.

Section 411.120 explains that a ticket is a document that provides evidence of the Commissioner's agreement to pay an EN or State VR agency to which a beneficiary's ticket is assigned for providing services to the beneficiary under the Ticket to Work program if certain conditions are met. As required by section 101(e)(2)(B) of Public Law No. 106–170, we have added a complete description of the format and the wording of the ticket to this section.

Section 411.125 states the following requirements, among others, for eligibility to receive a ticket: a title II beneficiary must be age 18 to 64, and a title XVI beneficiary must be age 18 to 64 and be eligible for disability payments under the disability standard for adults; a beneficiary must be in current pay status for monthly cash benefits based on disability under title II of the Act or monthly Federal cash benefits based on disability or blindness under title XVI of the Act; and a beneficiary's case must either (1) have a permanent impairment or a nonpermanent impairment (i.e. an impairment for which medical improvement is possible but cannot be predicted), or (2) have an impairment that is expected to improve and have undergone at least one continuing disability review (CDR).

In developing requirements for ticket eligibility under these regulations, we considered, but decided not to extend eligibility for a ticket to three additional groups of individuals.

The first group consists of beneficiaries who have impairments that are expected to improve and for whom we have not yet conducted at least one continuing disability review. Because these beneficiaries have conditions that are expected to medically improve in a relatively short period of time, they could be expected to return to work without the need for services under the Ticket to Work program. Continuing disability reviews for this category of beneficiaries are scheduled for 6–18 months after the initial disability determination. Under these rules, if we determine in the first continuing disability review that the beneficiary remains disabled, we would then issue a ticket, provided that the beneficiary met the other ticket eligibility criteria. This approach would ensure that beneficiaries whose conditions do not improve as anticipated have the opportunity to benefit from services under the Ticket to Work program within a relatively short period of time after the initial determination.

The second group consists of individuals who have not attained age 18. Beneficiaries in this group generally are in school, still pursuing completion of their formal elementary and secondary education. For this group, participation in an employment plan under the Ticket to Work program could interfere with their pursuit of an education, completion of which many believe should be the primary focus and goal for school-age youth.

The third group consists of those who received title XVI payments prior to attaining age 18 (i.e. under the disability standard for children) and have since attained age 18, but for whom we have not yet conducted a redetermination of their eligibility under the disability standard for adults. Because ongoing eligibility has not yet been determined for these beneficiaries, we believe that it is premature to issue a ticket to them immediately. Under the final rules, if we establish in the redetermination that a beneficiary in this group is eligible for disability payments under the disability standard for adults, we would then issue a ticket, provided that the beneficiary met the other ticket eligibility criteria.

We plan to review periodically our policy regarding ticket eligibility, including whether it would be prudent to extend eligibility to the groups discussed above. In addition, we are interested in exploring various approaches to assist youth under age 18 to transition to independence, further education, and careers in the workforce. Therefore, we are publishing a Notice elsewhere in today's **Federal Register** in which we are seeking suggestions from the public to assist us in designing for beneficiaries in the second and third groups an approach that could complement the Ticket to Work program.

In response to public comments, in these final rules we have added § 411.125(c) to explicitly state that individuals whose entitlement to title II benefits based on disability is reinstated under section 223(i) of the Act, or whose eligibility for title XVI benefits based on disability or blindness is reinstated under section 1631(p) of the Act, will be eligible to receive another ticket in the first month he or she is entitled to reinstated benefits, as long as the beneficiary meets certain other requirements for eligibility for a ticket. Sections 223(i) and 1631(p) of the Act were added by section 112 of Public Law 106–170.

Section 411.130 explains that SSA will distribute tickets in graduated phases.

Section 411.135 explains that participation in the Ticket to Work program is voluntary. This section explains that if beneficiaries want to participate in the program, they may take their tickets to any entity serving under the program.

Section 411.140 explains that a beneficiary may assign his or her ticket to any EN or State VR agency that is willing to provide services, and that the

beneficiary may discuss his or her rehabilitation and employment plans with as many entities as he or she wishes. This section explains that the beneficiary can obtain a list of the approved ENs in his or her area. This section also explains certain requirements that must be met in order for a beneficiary to assign a ticket. Section 411.140 provides that an individual will be eligible to assign a ticket to an EN or State VR agency only during a month in which the individual meets the requirements of § 411.125(a)(1) and (a)(2). In general, this means the individual must be age 18–64 and must be either a title II disability beneficiary in current pay status who is not receiving benefit payments under 20 CFR 404.316(c), 404.337(c), 404.352(d) or 404.1597a, or a title XVI disability beneficiary whose Federal SSI cash benefits are not suspended and who is not receiving disability or blindness benefit payments under 20 CFR 416.996 or 416.1338.

Section 411.140 also provides that beneficiaries and ENs must agree to and sign an individual work plan (IWP) (or, in the case of a State VR agency, an individualized plan for employment (IPE)) before a ticket can be assigned. In response to public comments, in these final rules we are revising § 411.140(a) to indicate that individuals may assign their ticket to a State VR agency if they are eligible to receive VR services according to 34 CFR 361.42. We are making a similar change to § 411.150 regarding reassignment of a ticket to a State VR agency. Also in response to comments, we are revising §§ 411.140 and 411.150 to indicate that a representative of the State VR agency must agree to and sign the IPE. We also have modified §§ 411.140 and 411.150 of the final rules to provide that in order for a ticket to be assigned or reassigned to a State VR agency, the beneficiary and a representative of the State VR agency must agree to and sign both an IPE and a form that provides the information described in § 411.385(a)(1), (2) and (3) of these final regulations.

We are also making changes to § 411.140(d) and (e) and § 411.150(b) and (c) in these final rules to clarify that a copy of the signed IWP developed by the beneficiary and the EN, or the completed and signed form required for assignment or reassignment of a ticket to a State VR agency under § 411.385(a) and (b), must be submitted to and received by the PM in order for a ticket to be assigned or reassigned to the EN or State VR agency. If the IWP or required form has been submitted to and received by the PM, and if the other requirements for assignment or reassignment of a ticket are met, we will consider the ticket assigned or reassigned to the EN or State VR agency, effective as of the first day on which such other requirements are satisfied.

Section 411.145 describes the conditions under which a beneficiary may take a ticket back after it has been assigned to an EN or State VR agency. It also describes other conditions under which a ticket that is assigned can be taken out of assignment. In response to public comments, we are revising § 411.145(b) to state that a State VR agency may ask the PM to take a ticket out of assignment if the State VR agency stops providing services because the individual has been determined to be ineligible for VR services under 34 CFR 361.42, and to provide a cross-reference to the reassignment rules in § 411.150.

Section 411.150 explains the beneficiary's right to reassign a ticket, if the beneficiary chooses. In response to public comments, we have revised § 411.150(b) to state that the beneficiary and a representative of the State VR agency must agree to and sign an Individualized Plan for Employment if the beneficiary wishes to reassign his or her ticket to a State VR agency. Also, as discussed above, we have modified this provision in the final rules to provide that in order for a ticket to be reassigned to a State VR agency, the beneficiary and a representative of the State VR agency must agree to and sign both an IPE and a form that provides the information described in § 411.385(a)(1), (2) and (3). We also are modifying § 411.150(b) to clarify that one of the conditions for reassigning a ticket is that the ticket must be unassigned. We explain that if the ticket currently is assigned to an EN or State VR agency, the beneficiary must first tell the PM in writing that he or she wants to take the ticket out of assignment as provided under § 411.145. In addition, as written, proposed § 411.150(b)(2) potentially could have prevented certain individuals who were working with ENs or State VR agencies from reassigning their ticket, thus unnecessarily limiting their ability to take full advantage of the provisions of the Ticket to Work program.

Accordingly, we have modified the requirements in § 411.150(b) to provide exceptions to the general rule that in order to reassign a ticket, an individual must be age 18–64 and either a title II disability beneficiary in current pay status or a title XVI disability beneficiary whose Federal SSI cash benefits are not suspended. Final § 411.150(b)(3) provides that an individual does not have to satisfy these requirements if the individual and a representative of the new EN sign an IWP, or if the individual and a representative of the State VR agency sign both an IPE and the required form, within certain time periods. The time periods begin from the effective date on which the ticket was no longer assigned to the previous EN or State VR agency. The applicable time period depends on whether the individual's ticket is or is not in use under the rules in § 411.170 *et seq.* For an individual whose ticket is not in use, the specified time period is 30 days from the effective date the ticket no longer was assigned to the previous EN or State VR agency. For an individual whose ticket is in use, the specified time period is the three-month period that begins with the first month the ticket no longer was assigned to the previous EN or State VR agency. This three-month period is the extension period described in § 411.220.

The requirements that an individual be age 18–64 and be either a title II disability beneficiary in current pay status or a title XVI disability beneficiary whose Federal SSI cash benefits are not suspended are two of the basic requirements specified in § 411.125(a)(1) and (2) which an individual must meet in order to be eligible to receive a ticket under that section. In these final rules, an individual must meet these same requirements in order to be eligible to reassign a ticket under § 411.150, unless one of the conditions specified in § 411.150(b)(3) is met.

In addition, final § 411.150(a) provides that an individual will not be eligible to reassign a ticket if he or she is receiving title II disability benefits under 20 CFR 404.316(c), 404.337(c), 404.352(d) or 404.1597a, or is receiving title XVI disability or blindness benefit payments under 20 CFR 416.996 or 416.1338. This rule was reflected in proposed § 411.150(b)(2). We are retaining this rule in final § 411.150(a). This rule applies regardless of whether one of the conditions specified in § 411.150(b)(3) is met.

Other changes which we are making in final § 411.150(b) and (c) are explained above in our discussion of the revisions to § 411.140. Because of these changes, proposed § 411.150(d) is deleted in these final rules.

Section 411.155 explains when a beneficiary's ticket terminates and eligibility for participation in the Ticket to Work program ends. Once a ticket terminates, a beneficiary may not assign or reassign it to an EN or State VR agency. Under these regulations, a ticket will terminate when: (1) entitlement to Social Security disability benefits ends for reasons other than the individual's

work activity or earnings, or when eligibility for SSI benefits based on disability or blindness terminates for reasons other than the individual's work activity or earnings, whichever is later; (2) a Social Security disabled widow(er) beneficiary attains age 65; or (3) a disabled or blind SSI beneficiary reaches age 65 and may qualify for SSI benefits based on age.

In order to provide clarity regarding all of the circumstances under which a ticket will terminate and an individual's eligibility for participation in the Ticket to Work program ends, we also are expanding § 411.155 to add a description of the events that terminate the ticket after the beneficiary's entitlement to title II benefits based on disability or eligibility for title XVI benefits based on disability or blindness terminated because of work or earnings. After such termination of entitlement or eligibility (and, in the case of a concurrent title II/title XVI disability beneficiary, the termination of entitlement/eligibility under the other program), a ticket will terminate in any of the following months: (1) the month we make a final determination or decision that an individual is not entitled to have title II benefits based on disability reinstated under section 223(i) of the Act or not eligible to have title XVI benefits based on disability or blindness reinstated under section 1631(p) of the Act; (2) the month in which we make a final determination or decision that an individual is not entitled to title II benefits based on disability or eligible for title XVI benefits based on disability or blindness based on the filing of an application for benefits; (3) the month in which a beneficiary reaches retirement age (as defined in section 216(l) of the Act); (4) the month in which the beneficiary dies; (5) the month in which a beneficiary becomes entitled to a title II benefit that is not based on disability or eligible for a title XVI benefit that is not based on disability or blindness; and (6) the month in which the beneficiary again becomes entitled to title II benefits based on disability, or eligible for title XVI benefits based on disability or blindness, based on filing a new application.

In addition, consistent with the modification to § 411.125, we are modifying § 411.155 to indicate that when a beneficiary is eligible to receive another ticket as a result of benefit reinstatement under section 223(i) or 1631(p) of the Act, the ticket that the beneficiary received in connection with the previous period of entitlement or eligibility will terminate in the month the beneficiary is eligible for the new ticket.

We have deleted reference to payment of 60 outcome payments to an EN that was described in proposed § 411.155(d), since this event properly refers to the period of using a ticket (see § 411.171(d) and (e)).

Subpart C—Suspension of Continuing Disability Reviews for Beneficiaries Who Are Using a Ticket

Under section 221(i) of the Act and under the authority granted by sections 1631 and 1633 of the Act, we conduct periodic reviews to ensure that beneficiaries continue to meet the definition of disability under sections 223(d) and 1614(a) of the Act. These reviews are called continuing disability reviews (CDRs). Public Law 106–170 amends the Act to add section 1148(i), which states that SSA may not initiate a CDR during any period in which a beneficiary is using a ticket. The statute states:

''During any period for which an individual is using, as defined by the Commissioner, a ticket to work and self-sufficiency issued under this section, the Commissioner (and any applicable State agency) may not initiate a continuing disability review or other review under section 221 of whether the individual is or is not under a disability or a review under title XVI similar to any such review under section 221.''

The definition of using a ticket is to be determined by the Commissioner of Social Security. Subpart C outlines our definition of using a ticket.

In developing our definition of using a ticket, we considered two key factors. First, the intent of the Ticket to Work program is to allow beneficiaries with disabilities to seek the services they need to work and to reduce or eliminate dependence on Social Security disability and SSI benefits. However, anecdotal evidence suggests that some beneficiaries are afraid that working, or even receiving vocational rehabilitation services, may increase the likelihood that their benefits will be terminated by a CDR. Therefore, using a ticket should be defined in a way that minimizes this employment disincentive for beneficiaries participating in the Ticket to Work program. In order to maintain the integrity of the disability programs, it is also important that beneficiaries who have medically improved and who no longer meet the definition of disability under sections 223(d) and 1614(a)(3) of the Act do not continue to receive disability benefits for an undue length of time.

Our definition seeks to balance these concerns by ensuring that CDRs are suspended only during the period in which beneficiaries are making timely progress toward reducing or eliminating dependence on Social Security disability or SSI benefits, while at the same time recognizing that progress toward that goal may not always be rapid or continuous.

Under our definition of using a ticket, a beneficiary will be considered to be using a ticket during the period in which he or she was making progress toward the goal of reducing or eliminating dependence on disability benefits within reasonable time frames. Under this approach, beneficiaries will be allowed a limited period to prepare for work. At the end of this period, they will need to show that they were progressing toward self-sufficiency by demonstrating increasing levels of employment.

An important advantage of this definition of using a ticket is that it increases employment incentives by ''rewarding'' beneficiaries who work and progress toward self-sufficiency with continued suspension of CDRs. However, requiring beneficiaries to demonstrate increasing levels of employment within a defined time frame results in a fairly complex regulation. The complexity arises from our attempt to balance the concerns discussed above and, to the extent possible, to accommodate the diverse employment needs of a wide range of beneficiaries. While some level of complexity is unavoidable, we have attempted wherever possible to simplify the regulation and to make it straightforward to implement.

Based on the comments that we received regarding the complexity and difficulty of this subpart, we are revising and reorganizing the content to increase clarity wherever possible.

Sections 411.160 and 411.165 introduce this subpart. In response to a comment on proposed § 411.160 noting a confusion in the use of the term ''continuing disability review'' for both medical and work reviews, we are clarifying the language in paragraph (b) to reference our rules on when we may conduct a CDR to determine whether an individual remains eligible for disability-based benefits. In response to recommendations that we clarify proposed § 411.165 to explain when the period of using a ticket begins and ends, we are expanding § 411.165 to include cross-references to §§ 411.170 and 411.171.

We are adding § 411.166 in response to comments on our proposed rules regarding the use of new terms. This

section provides a glossary of the following terms: ''active participation in your employment plan,'' ''extension period,'' ''inactive status,'' ''initial 24-month period,'' ''progress review,'' ''timely progress guidelines,'' ''12-month progress review period,'' and ''using a ticket.''

In our proposed rules, we used the terms ''work review'' or ''work review period'' when referring to the requirements for making timely progress toward self-supporting employment. In response to comments that these terms caused confusion with existing terms used to describe ''work CDR,'' we are now referring to ''progress review'' or ''progress review period,'' which are included in the glossary of terms in § 411.166.

Sections 411.170 and 411.171 describe when the period of using a ticket begins and ends. The period of using a ticket begins when the ticket is first assigned to an EN or State VR agency. The primary purpose of the suspension of CDRs is to ensure that Ticket to Work program participants are not inhibited in their attempts to work or pursue an employment plan by the fear that such activities will increase the likelihood that their benefits will be terminated in a medical review. Prior to the assignment of the ticket, a beneficiary is not participating in these activities under the Ticket to Work program.

We are revising § 411.171 to clarify that the period of using a ticket ends with the earliest of the following (1) the occurrence of one of the events listed in § 411.155, which describes the events that will result in termination of the ticket; (2) when the beneficiary is determined to be no longer making timely progress toward self-supporting employment according to our guidelines (see §§ 411.180 through 411.200); (3) when the extension period expires if the beneficiary has not reassigned the ticket within the period; or (4) when we have made 60 outcome payments to an EN, including a State VR agency functioning as an EN, under subpart H. In instances where the beneficiary assigned a ticket to a State VR agency which selected the cost reimbursement payment system, the period of using a ticket also will end with the 60th month for which an outcome payment would have been made had the State VR agency chosen to function as an EN with respect to the beneficiary.

Section 411.175 describes our rules when a beneficiary assigns a ticket after a CDR has begun. A beneficiary may assign the ticket and receive services under the Ticket to Work program. We will, however, complete the CDR.

Sections 411.180, 411.185, 411.190 and 411.191 describe our guidelines for timely progress toward self-supporting employment.

After assigning a ticket, beneficiaries will be allowed up to two years to prepare for employment. This two-year period is referred to in the final rules as the initial 24-month period. After two years, we will consider that beneficiaries are continuing to use a ticket, and are therefore eligible to receive the protection in Section 1148(i) of the Act regarding non-initiation of CDRs, if they work at progressively higher levels of employment. Such a progression would allow beneficiaries time to improve their employment capacities.

We are reordering certain paragraphs in § 411.180 to provide a more appropriate placement for the definitions of terms we use to describe the guidelines we use to determine if an individual is making timely progress toward self-supporting employment. We are also clarifying that, for purposes of counting the 24 months comprising the initial 24-month period, we will not count any month in which the ticket is not assigned or not in use.

Under our timely progress guidelines, in the 24-month progress review conducted by the PM, beneficiaries must demonstrate that their employment plan has a goal of at least three months of work, as defined in § 411.185, by the time of the first 12-month progress review. The PM also must find that beneficiaries can reasonably be expected to reach this goal. In response to public comments, we are revising § 411.180(c)(1) to allow beneficiaries to use months worked during the initial 24-month period to meet these requirements of the 24-month progress review, as long as the work was at the level applicable to the work requirements for the first 12-month progress review period under § 411.185. In the third year of participation in the Ticket to Work program (referred to in the final rules as the first 12-month progress review period), beneficiaries would be required to work at least three months at a specified level. In response to public comment, we are revising § 411.180(c)(2) to allow beneficiaries to use months worked during the initial 24-month period to meet this requirement as well, as long as the work was at the required level as described in § 411.185. We are revising § 411.185(a)(1), (b)(1) and (c)(1) to reference the rules in § 411.180(c)(1) and (c)(2) on when months of work performed during the initial 24-month period may be used to meet certain requirements of the 24-month progress review and the work requirements of the first 12-month progress review period.

In the fourth year of participation in the program, beneficiaries will be required to work at least six months at the SGA level. In the fifth and succeeding years, in order to be considered to be using a ticket, they will be required to work at least six months in each year and have earnings in each such month that are sufficient to eliminate the payment of Social Security disability benefits and Federal SSI benefits.

In developing these guidelines, we recognized that progress toward self-sufficiency is not always continuous, and some beneficiaries may not attain full self-sufficiency. Many beneficiaries have disabilities with cycles of relapse and remission. In addition, some beneficiaries may need to try more than one job before finding a situation that suits their abilities and needs. The requirement that beneficiaries need only work three months out of 12 in the third year and six months out of 12 in succeeding years recognizes that some beneficiaries may not be able to work on a continuous basis.

Section 411.185 provides levels of earnings that an individual must have in order to be considered to be using a ticket. It defines when an individual will be considered to be working for purposes of meeting the timely progress guidelines. Under this definition, the required earnings level will increase over time. In the third and fourth years of participation in the Ticket to Work program (i.e. the first and second 12-month progress review periods), both Social Security disability beneficiaries and concurrent Social Security and SSI beneficiaries will be required to work at the SGA level applicable to non-blind beneficiaries for the specified number of months. This means that the beneficiary must have monthly earnings from employment or self-employment, after any applicable deductions under 20 CFR 404.1572 through 404.1576, that are more than the SGA threshold amount for non-blind beneficiaries.

The SGA threshold amount is set by regulation under 20 CFR 404.1574(b)(2), and is currently $740 a month for non-blind beneficiaries. Social Security disability beneficiaries, including concurrent Social Security and SSI beneficiaries, who are in a trial work period or who are statutorily blind will be deemed to have met the requirement to work at the SGA level applicable to non-blind beneficiaries if their gross earnings from employment, before any exclusions, are more than the SGA threshold amount for non-blind

beneficiaries, or if their net earnings from self-employment, before any exclusions, are more than the SGA threshold amount for non-blind beneficiaries.

Under the definition of work for purposes of the first and second 12-month progress review periods, SSI disability and blindness beneficiaries will be considered to be working in a month in which the beneficiary has gross earnings from employment, before any exclusions, that are more than the SGA threshold amount for non-blind beneficiaries, or has net earnings from self-employment, before any exclusions, that are more than the SGA threshold amount for non-blind beneficiaries.

Earnings at the levels established in § 411.185 for the third and fourth years of participation in the program may not be sufficient to eliminate the payment of all disability benefits. The amount of earnings needed to eliminate the payment of disability benefits depends on a variety of factors, including whether the beneficiary receives Social Security or SSI benefits, or both, whether the beneficiary is blind, and whether the beneficiary has impairment-related work expenses or is eligible for other income exclusions. The earnings requirement for the third and fourth years are set at levels that allow beneficiaries time to work toward the higher levels of earnings that may be required to eliminate the payment of disability benefits for the required months in subsequent years of program participation.

In the fifth and subsequent years of participation in the program, both Social Security and SSI beneficiaries will be required to work for at least six months with earnings in each such month that are sufficient to eliminate payment of Social Security disability and Federal SSI cash benefits in a month. The requirement that individuals using a ticket eventually attain this level of earnings is consistent with the payment structure of the Ticket to Work program, in which ENs receive outcome payments only when Federal disability benefit payments are eliminated. It also reflects that one of the purposes of the Ticket to Work program is to produce savings in benefit payments. Since the suspension of CDRs for individuals using a ticket means that it is possible that some beneficiaries who no longer meet the definition of disability will continue to be eligible for benefits, it is important that the suspension of CDRs not continue for an undue length of time without a significant reduction in benefit payments due to earnings.

In § 411.190, we discuss how it will be determined if a beneficiary is meeting the timely progress guidelines. To place the rules in a more logical order according to the sequence of events and actions they discuss, we are expanding § 411.190 to incorporate the rules for placing a ticket in inactive status, as well as other rules relating to the initial 24-month period, that were previously set out in proposed §§ 411.192 and 411.220. (In the final rules, § 411.192 has been deleted, and proposed § 411.225 has been redesignated § 411.220.) During the initial 24-month period following assignment of a ticket, the PM will give beneficiaries the option of placing the ticket in inactive status if they are unable to participate in their employment plan for a significant period of time for any reason. Beneficiaries may decide to exercise this option because any months during which the ticket is in inactive status will not count toward the time limitations (i.e. the initial 24-month period) under the timely progress guidelines. The PM will explain, however, that since the ticket will not be in use during the period in which it is in inactive status, the beneficiary will be subject to a CDR, should one become due.

A beneficiary will be subject to initiation of a CDR during any period for which the beneficiary's ticket is considered to be not in use. A ticket is considered to be not in use during any month during which the ticket is in inactive status as described in § 411.190 or during which the ticket is unassigned following the close of the three-month extension period described in § 411.220. A ticket also is considered to be not in use after the period of using a ticket ends as described in § 411.171.

We are modifying the summary table in § 411.191 to reflect the rule we are adding to § 411.180(c)(2) which will allow beneficiaries to use months worked during the initial 24-month period to meet the work requirements of the first 12-month progress review if the work was at the requisite level. We also are making changes to the table in these final rules to clarify certain entries in the table, to reflect changes we are making to other sections of the final rules in subpart C, and to provide a more accurate description of the level of earnings required for SSI-only beneficiaries during the first and second 12-month progress review periods.

In §§ 411.195, 411.200 and 411.205, we discuss how the PM will conduct periodic progress reviews to ensure that beneficiaries are meeting the timely progress guidelines. The first review will be a 24-month progress review occurring at the end of the initial 24-month period. This will be followed by 12-month progress reviews. After successfully completing a progress review, the beneficiary will be considered to be meeting the timely progress guidelines until the next review is completed. If a beneficiary disagrees with the PM's decision in any review, the beneficiary will have the right to ask SSA to review the PM's decision. The Commissioner or the Commissioner's designee will review the decision. The criteria for the 24-month progress review and the 12-month progress reviews are designed to be as clear-cut as possible. This feature, combined with the PM's responsibility for conducting the reviews should allow for rapid processing of reviews and decrease the administrative burden on both the beneficiary and SSA.

In response to public comments, we are adding a sentence to § 411.195(a)(1) to indicate that the activities outlined in the employment plan during the initial 24-month period may include employment.

In § 411.210, we explain that a determination that a beneficiary is not making timely progress toward self-supporting employment will result in our finding that the beneficiary no longer is using a ticket. The beneficiary would be allowed to continue in the Ticket to Work program, and the beneficiary's EN or State VR agency would be eligible for any payments that became due. In response to public comments, we are modifying § 411.210(a) to indicate that these payments would include not just outcome payments, but also milestone payments (or, for a State VR agency electing payment under the cost reimbursement payment system, payments under the cost reimbursement payment system) for which the ENs or State VR agencies are eligible. These beneficiaries, however, would once again be subject to CDRs.

This section also provides that a beneficiary who fails to meet the timely progress guidelines will have the opportunity to be considered to be using a ticket later if the beneficiary actively participates in the employment plan or works for a specified number of months. The requirements which a beneficiary must meet in order to re-enter in-use status (including the number of months, type of participation, and earnings level required) vary depending on how far the beneficiary had progressed when he or she failed to meet the timely progress guidelines.

We are providing this method of allowing a beneficiary to be considered

again to be using a ticket because, as previously stated, we recognize that due to the nature of disability, progress toward increased self-sufficiency is not always direct. Beneficiaries may make unsuccessful attempts before reaching their employment goals, and these unsuccessful attempts should not deprive them of the supports that they need to make renewed efforts.

In response to a public comment, we are adding a new § 411.210(b)(1) to provide that a beneficiary who fails to meet the timely progress guidelines during the initial 24-month period may re-enter in-use status by demonstrating three consecutive months of active participation in the employment plan. This new provision is more consistent with the requirements of active participation during this period under the timely progress guidelines under § 411.190(a). In new § 411.210(b)(1)(iii) we explain that for a beneficiary who is reinstated to in-use status after having failed to meet the timely progress guidelines during the initial 24-month period, the next review will be the 24-month progress review. We also have added a new § 411.210(b)(2) to provide a separate provision on re-entering in-use status for a beneficiary who failed to meet the timely progress guidelines in the 24-month progress review. In new § 411.210(b)(2)(i), we explain that, consistent with the proposed rules, a beneficiary who fails to meet the timely progress guidelines in the 24-month progress review may re-enter in-use status by completing three months of work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) within a rolling 12-month period. We have modified this provision (which was formerly a part of proposed § 411.210(b)(1)) to provide that the beneficiary also must satisfy the test of § 411.200(a)(2) regarding the anticipated level of the beneficiary's work during the ensuing 12-month progress review period that would begin if the beneficiary were reinstated to in-use status. We also clarify in new § 411.210(b)(2)(i) and (iii) that the work requirements for this 12-month progress review period will be the work requirements that are applicable during the second 12-month progress review period.

To accommodate new § 411.210(b)(1) and (b)(2), we have renumbered the remaining numbered paragraphs that were included under proposed § 411.210(b). In § 411.210(b)(3), (b)(4) and (b)(5) of the final rules, we have added provisions to the rules on re-entering in-use status to provide that, in addition to completing the work requirements, the beneficiary also must satisfy the test of § 411.200(a)(2) regarding the anticipated level of the beneficiary's work during the ensuing 12-month progress review period that would begin if the beneficiary were reinstated to in-use status. This change is consistent with the two-step process for the 12-month progress reviews under § 411.200(a).

For further clarification of the process of re-entering in-use status, we are adding § 411.210(c), and revising § 411.210(b), to describe the process for requesting reinstatement to in-use status, to explain that the PM will decide whether the beneficiary has satisfied the requirements for re-entering in-use status, and to provide that a beneficiary may ask us to review the PM's decision that the beneficiary has not satisfied the requirements for re-entering in-use status. These sections explain that a beneficiary must submit a written request to the PM asking that he or she be reinstated to in-use status. If the PM decides that the beneficiary has not satisfied the requirements for re-entering in-use status, the beneficiary may request that we review the decision.

Final § 411.220 was § 411.225 in the proposed rules. Final § 411.220 explains that beneficiaries who are using a ticket are eligible for an extension period of up to three months to reassign a ticket that previously was assigned to an EN or State VR agency and no longer is assigned. We have revised this section to indicate that the ticket must be in use for the beneficiary to be eligible for the extension period. During this period, we will consider that the ticket still is in use, and the beneficiary will not be subject to CDRs. In response to public comments, we are modifying this section to show the beneficiary's moving to an area not served by the previous EN or State VR agency as a reason the ticket may no longer be assigned. We also have explained in § 411.220(e) of the final rules that a beneficiary whose extension period began during the initial 24-month period will have a new initial 24-month period when the beneficiary reassigns a ticket during the extension period to an EN or State VR agency, other than the one to which the ticket previously was assigned.

We are adding a new § 411.225 to describe the circumstance of a beneficiary reassigning a ticket after the end of the extension period. This section concerns a situation that was not discussed in the proposed rules. This section explains that a beneficiary may reassign a ticket after the end of the extension period under the conditions described in § 411.150. Section 411.225(c) explains that if the extension period began during the initial 24-month period, a beneficiary will have a new initial 24-month period when the beneficiary reassigns a ticket to an EN or State VR agency, other than the one to which the ticket previously was assigned. The reason for providing a new initial 24-month period at this time is because the beneficiary may have to reassign his or her ticket due to no fault of his or her own. For example, the EN may have gone out of business or be no longer approved to participate in the Ticket to Work program, or the beneficiary may have to relocate or may have a relapse in his or her medical condition. Section 411.225(d) explains that if the extension period began during any 12-month progress review period, the period comprising the remaining months in that review period will begin with the first month beginning after the day on which reassignment of the ticket is effective.

Subpart D—Use of One or More Program Managers To Assist in Administration of the Ticket To Work Program

Section 1148(d)(1) of the Act requires the Commissioner to enter into an agreement with one or more organizations to serve as a PM to assist the Commissioner in administering the Ticket to Work program. Section 101(e)(2)(E) of Public Law 106–170 identified specific regulations that SSA must promulgate regarding the terms of the agreements to be entered into with a PM. Three items are specifically required:

(1) the terms by which a PM would be precluded from direct participation in the delivery of services;

(2) standards which must be met by quality assurance measures and methods of recruitment of ENs; and

(3) the format under which dispute resolution will operate under section 1148(d)(7) of the Act.

Among other things, section 1148(d)(7) requires the Commissioner to provide a mechanism for resolving disputes between PMs and ENs, and between PMs and providers of services.

Subpart D of these regulations explains that SSA will contract with one or more organizations to serve as a PM and assist SSA in administering the Ticket to Work program.

Section 411.230 explains that SSA will conduct a competitive bidding process to select one or more private organizations to perform the PM's functions.

Section 411.235 describes the minimum qualifications required of a PM.

Section 411.240 describes certain limitations that are placed on a PM regarding the direct provision of services under the Ticket to Work program.

Section 411.245 identifies key responsibilities that a PM must assume to assist SSA in administering the program, including ensuring that information provided to beneficiaries is in alternate formats, meaning media appropriate to beneficiaries' impairments. We are revising paragraph (b)(2) of § 411.245 to remove the word ''medical'' from the term ''medical impairment'' used in defining ''accessible format,'' as recommended by one commenter, because not all impairments are medical. We are also revising paragraph (c)(2) of § 411.245, as recommended by a number of commenters, to make it clear that the PM will be responsible for making determinations regarding the allocation of outcome or milestone payments when the beneficiary has been served by more than one EN.

Section 411.250 explains how SSA will evaluate a PM.

Subpart E—Employment Networks

Section 1148(d)(4)(A) of the Act requires the Commissioner to select and enter into agreements with ENs to provide services under the Ticket to Work program. Section 1148(f)(1)(A) states that each EN serving under the Ticket to Work program shall consist of an agency or instrumentality of a State (or a political subdivision thereof) or a private entity that assumes responsibility for the coordination and delivery of services under the program to beneficiaries assigning tickets to it.

These ENs are in addition to State agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), known as State VR agencies, that will also be serving beneficiaries with disabilities under the Ticket to Work program. State VR agencies will have the option of serving beneficiaries with tickets either as an EN (that is, to be paid under one of the EN payment systems described in subpart H of these regulations) or under the existing cost reimbursement payment system authorized in sections 222(d) and 1615(d) of the Act. The Commissioner is also directed to enter into an agreement with any alternate participant operating under the authority of section 222(d)(2) of the Act in any State where the Ticket to Work program is being implemented if the alternate participant chooses to serve as an EN. An EN may consist of a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 *et seq.*).

Section 1148(f) of the Act requires that entities seeking to participate in the Ticket to Work program as ENs meet certain qualifications. The Commissioner has discretion in determining the qualifications that an entity must meet to be approved to serve as an EN. We are providing requirements for ENs that are not unduly burdensome and that are intended to permit both traditional as well as other types of entities to qualify. The Commissioner's intent is to ensure that non-traditional service providers are not prohibited from being approved as ENs, while still requiring evidence that all ENs meet certain minimum qualifications such as licensure, accreditation, academic qualifications, or experience. This inclusive approach is critically important to ensure that beneficiaries with disabilities have a real choice in services necessary to obtain, regain and maintain employment.

Section 1148(f) of the Act also addresses requirements for ENs under the Ticket to Work program. It requires each EN to serve a prescribed service area and ensure that employment services, VR services, and other support services are provided under appropriate IWPs.

Sections 411.300 and 411.305 of these regulations explain what an EN is and what entities are eligible to apply to serve as ENs.

Section 411.310 explains how public or private entities will apply to us to be approved as ENs and how we will determine whether an entity qualifies to be an EN. We are changing the heading of § 411.310 to make it clear that this section is not applicable to State VR agencies and that State VR agencies do not apply to be ENs.

We are revising the first sentence of § 411.310(a) to make it clear that a State VR agency does not have to respond to our request for proposals (RFP) to function as an EN.

We are adding paragraph (c) to this section to § 411.310 to provide a cross-reference to § 411.360 on how a State VR agency begins to participate as an EN in the Ticket to Work program.

Section 411.315 describes the minimum qualifications for an EN under the Ticket to Work program. In response to public comments, we are adding language to paragraph (a)(2) of § 411.315 to provide examples of what we mean by programmatically accessible.

We are revising section 411.315(b)(2) to make it clear that ENs are not required to provide medical or related health services or be licensed to provide such services, but that the EN should take reasonable steps to assure that if any medical and related health services are provided, such medical and health related services are provided under the formal supervision of persons licensed to prescribe or supervise the provision of these services.

Section 411.315 provides that an EN must have applicable certificates, licenses, or other credentials if State law in the entity's State requires such documentation to provide VR services, employment services or other support services in the State.

Section 411.320 describes the major responsibilities of an entity serving as an EN.

Section 411.321 explains the conditions under which we will terminate an agreement with an EN for inadequate performance. We have clarified that we will terminate an agreement with an EN for non-compliance in any of the three areas cited in this section.

Section 411.325 lists the reporting requirements placed on an entity serving as an EN. We are adding a new paragraph (e) to require that ENs submit information to assist the PM conducting the reviews necessary to determine whether a beneficiary is making timely progress towards self-supporting employment. This requirement is necessary to obtain information for determining whether a beneficiary will continue to receive CDR protection. It will make the EN reporting requirement consistent with the reporting requirement of State VR agencies regarding timely progress reviews. As a result of adding a new paragraph (e), we are redesignating the proposed paragraphs (e) through (i) as paragraphs (f) through (j) in the final rules. We are deleting the requirement from paragraph (g) in the proposed rules (redesignated as paragraph (h) in the final rules) to submit a financial report that shows the percentage of the EN's budget that was spent on serving beneficiaries with tickets, including the amount spent on beneficiaries who return to work and those who do not return to work. We are making this change because of many public comments indicating that this would be a burdensome reporting requirement.

Section 411.330 explains how we will evaluate an EN's performance.

Subpart F—State Vocational Rehabilitation Agencies' Participation

Section 1148(c) of the Act addresses participation by State VR agencies in the Ticket to Work program. In general, this section gives each State VR agency the opportunity to determine, on a case-by-case basis, whether it will participate in the Ticket to Work program as an EN or under the cost reimbursement payment system authorized under sections 222(d) and 1615(d) of the Act (see 20 CFR §§ 404.2101 *et seq.* and 416.2201 *et seq.*). The State VR agency must elect either the outcome payment system or the outcome-milestone payment system to be used when it functions as an EN when serving a beneficiary with a ticket. The Commissioner is directed to provide for periodic opportunities to exercise this election.

Generally, under the Ticket to Work program, State VR agencies will continue to operate as they do today. For example, when a State VR agency functions as an EN, it will provide services in accordance with the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), and a client will complete an individualized plan for employment with the State VR agency. If a State VR agency has a dispute over a payment under the cost reimbursement payment system, the State VR agency will use the dispute resolution procedures already in place under 20 CFR 404.2127 and 416.2227. The new functions and responsibilities for State VR agencies under the Ticket to Work program include checking with the PM if the State VR agency wants to see if a disabled beneficiary who is seeking services from the State VR agency has a ticket that is available for assignment or reassignment, submitting information to the PM required to assign or reassign a beneficiary's ticket to the State VR agency, routing EN payment dispute questions through the PM, submitting preliminary and post-employment data to the PM, and providing reports regarding the outcomes achieved by beneficiaries assigning tickets to the State VR agency in those cases where the State VR agency functioned as an EN.

Subpart F of these regulations establishes that the cost reimbursement payment system is a payment option under the Ticket to Work program for State VR agencies, subject to certain limitations described in § 411.585(a) and (b) of subpart H of these final rules.

Section 411.350 explains that a State VR agency must participate in the Ticket to Work program if it wishes to receive payment from SSA for serving disabled beneficiaries who are issued a ticket. We have clarified this section by adding the words ''who are issued a ticket''.

Section 411.355 describes the different payment options available to the State VR agencies. Section 411.355 explains that, subject to the limitations in § 411.585 of subpart H, State VR agencies, on a case-by-case basis, may participate in the Ticket to Work program either as an EN or under the cost reimbursement payment system. This section also explains that the State VR agency must use the EN payment system it elected when serving a beneficiary as an EN. We have modified the language and structure of this section for added clarity.

Section 411.360 explains what a State VR agency must do to function as an EN under the Ticket to Work program with respect to a beneficiary and explains that a State VR agency may choose, on a case-by-case basis, to seek payment from SSA under the cost reimbursement payment system or its elected EN payment system. Paragraph (a) of § 411.360 describes the method SSA will use to communicate with State VR agencies about implementation of the Ticket to Work program in States. Paragraph (b) includes a reference to the limitations on payment in § 411.585. We have made these changes to this section to add clarity.

Section 411.365 describes how a State VR agency will select an EN payment system for use when functioning as an EN. In these final rules, we are modifying § 411.365 to eliminate the requirement that the Governor or Governor's designated representative must sign the letter advising SSA of which EN payment system the State VR agency will use when it functions as an EN with respect to a beneficiary who has a ticket. We are revising this section to provide that the director of the State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), or the director's designee must sign the letter advising SSA of the State VR agency's election of an EN payment system. We are making this change to the final rules to respond to comments that the director or his or her designee is in a better position to make the payment election decision.

Section 411.370 explains that a State VR agency generally may choose to be paid under the cost reimbursement payment system when serving beneficiaries with tickets, subject to the limitation in § 411.585(b) of subpart H of these final rules.

Section 411.375 explains that State VR agencies must continue to provide services to beneficiaries with tickets under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*).

Section 411.380 describes how a State VR agency can determine if a disabled beneficiary seeking services has been issued a ticket and, if so, the status of the ticket. We have made changes to this section in the final rules to provide a more accurate description of the information the State VR agency can obtain from the PM regarding a beneficiary's ticket status.

Section 411.385 explains that once the State VR agency determines that a beneficiary is eligible for vocational rehabilitation services, the beneficiary and a representative of the State VR agency must agree to and sign an IPE. In these final rules, we are revising the provisions of § 411.385(a) to conform to the changes we are making to §§ 411.140 and 411.150 regarding the requirements that must be met in order for a beneficiary to assign or reassign a ticket. We explain that the parties must agree to and sign an IPE in order for the beneficiary to assign or reassign his or her ticket to the State VR agency. We explain that §§ 411.140(d) and 411.150(a) and (b) describe the other requirements which must be met for a ticket to be assigned or reassigned, respectively. Final § 411.385(a) explains that in order for a beneficiary's ticket to be assigned or reassigned to the State VR agency, the State VR agency must submit the information described in § 411.385(a)(1)–(a)(3) to the PM. This information includes the method of payment which the State VR agency is selecting for a particular beneficiary.

We are revising § 411.385(b) to change the designation of the person in the State VR agency who is required to sign the completed form which the State VR agency must submit to the PM in order for a ticket to be assigned or reassigned to the State VR agency. We are revising this section to permit ''a representative of the State VR agency'' to sign the form as this provides greater flexibility to the State VR agency than our proposed requirement that the form be signed by ''the State VR agency representative working with the beneficiary.''

Section 411.390 describes what a State VR agency should do when a beneficiary already receiving services under an approved IPE becomes eligible for a ticket that is available for assignment and decides to assign the ticket to the State VR agency. We are modifying this section in the final rules to provide a more accurate description

of the circumstances in which an individual who is already receiving services from the State VR agency under an IPE may become eligible for a ticket. We also are adding a provision to clarify that the State VR agency must submit the completed and signed form described in § 411.385(a) and (b) to the PM in order for the beneficiary's ticket to be assigned to the State VR agency. In addition, we explain that § 411.140(d) describes the other requirements which must be met in order for the beneficiary to assign a ticket.

Section 411.395 explains that each State VR agency will be required to provide periodic reports to the PM on the specific outcomes achieved with respect to the services provided to beneficiaries under the Ticket to Work program in cases where the State VR agency functioned as an EN.

Section 1148(c)(3) of the Act requires State VR agencies and ENs to enter into agreements regarding the conditions under which services will be provided when an EN that has been assigned the beneficiary's ticket refers the beneficiary to a State VR agency for services.

Sections 411.400 and 411.405 explain that an EN may refer a beneficiary that it is serving under the Ticket to Work program to a State VR agency for services only if such an agreement is in place prior to the EN making the referral.

Section 411.410 explains that these agreements should be broad-based and apply to all beneficiaries who may be referred by an EN to a particular State VR agency. In the final rules, we are modifying § 411.410 to indicate that the general guideline that the agreements should be broad-based and apply to all beneficiaries who may be referred by an EN to a State VR agency is not intended to preclude an EN and a State VR agency from entering into an individualized agreement to meet the needs of a single beneficiary if both the EN and State VR agency wish to do so.

Section 411.415 explains that the PM will verify the establishment of such agreements based on the EN's submission of a copy of the agreement to the PM.

Section 411.420 provides guidance and examples of what could be included in these agreements.

Section 411.425 explains what a State VR agency should do if an EN attempts to refer a beneficiary being served under the Ticket to Work program to the State VR agency without having established such an agreement.

Section 411.430 explains what the PM should do when notified that a referral has been attempted in the absence of an agreement.

Section 411.435 establishes procedures for resolving disputes arising under these agreements between ENs and State VR agencies. We are revising this section by replacing the word ''should'' in § 411.435(a) and (b) with ''must,'' to establish the regulatory policy as a requirement to be followed in the dispute resolution process.

Subpart G—Requirements for Individual Work Plans

Section 1148(g) of the Act requires each EN to ensure that employment services, vocational rehabilitation services, and other support services provided under the Ticket to Work program are provided under IWPs. The minimum requirements for an IWP are spelled out in this section.

Subpart G of these regulations establishes the requirements for the IWP that must be developed when an EN and a beneficiary with a ticket agree to work together under the Ticket to Work program. Beneficiaries who are clients of the State VR agencies will continue to use the IPE rather than an IWP.

Section 411.450 explains what an IWP is. In response to comments on the proposed rule, we are revising this section to spell out ''individual work plan'' for clarity, and to add the words ''(other than a State VR agency)'' to clarify that IWPs would not be a requirement for State VR agencies.

Section 411.455 explains the purpose of the IWP and explains that the EN must develop and implement the plan in a manner that gives the beneficiary the opportunity to exercise informed choice in selecting an employment goal.

Section 411.460 explains that the beneficiary and the EN share the responsibility for determining the content of the IWP.

Section 411.465 describes the specific information that must be included in each IWP.

Section 411.470 describes when an IWP becomes effective. In the final rules, we are revising § 411.470 to conform to the changes we are making to §§ 411.140 and 411.150 concerning the requirements which must be met in order for a beneficiary to assign or reassign his or her ticket. We are also revising § 411.470(b) to make the effective date of an IWP consistent with the effective date of the assignment or reassignment of the beneficiary's ticket.

Subpart H—Employment Network Payment Systems

Section 1148(h) of the Act provides that the Ticket to Work program shall provide for payment authorized by the Commissioner to ENs under either an outcome payment system or an outcome-milestone payment system. Each EN must elect which payment system it will use.

The outcome payment system and the outcome-milestone payment system are defined in § 411.500. This section also defines certain other terms we use in this subpart relating to the EN payment systems.

The first term we define in § 411.500 is the ''payment calculation base.'' This term relates to the amount we will pay an EN (including a State VR agency choosing to be paid as an EN) under either EN payment system. We will pay an EN for specific milestones or outcomes that a beneficiary who assigns the ticket to the EN achieves, not for the costs of specific services that the EN provides. We base milestone and outcome payments upon the prior calendar year's national average disability benefit payable under title II or title XVI, not upon the specific benefit payment payable to a beneficiary with a ticket. We call the national average benefit payment the payment calculation base. In § 411.500(a)(1), we define the payment calculation base applicable in connection with a title II or concurrent title II/title XVI disability beneficiary. In § 411.500(a)(2), we define the payment calculation base applicable in connection with a title XVI disability beneficiary, who is not concurrently a title II disability beneficiary.

In § 411.500(b), we define the term ''outcome payment period.'' Both EN payment systems provide for a payment to an EN for each month, during an individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of the performance of substantial gainful activity (SGA) or by reason of earnings from work activity. Each beneficiary who is issued a ticket has one outcome payment period in connection with that ticket. In § 411.500(b), we explain that an individual's outcome payment period begins with the first month, ending after the date on which the ticket was first assigned, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual due to SGA or earnings. We also explain that the outcome payment period ends with the 60th month, consecutive or otherwise, ending after such date, for which such benefits are not payable due to SGA or earnings.

In these final rules, we are modifying the definition of the ''outcome payment system'' in § 411.500(c) to clarify that this payment system provides for a schedule of payments to an EN for each

month, during an individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings. We are also expanding § 411.500 in these final rules to include definitions of ''outcome payment'' and ''outcome payment month.'' In final § 411.500(d), we explain that ''outcome payment'' means a payment for an outcome payment month. In final § 411.500(e), we explain that ''outcome payment month'' means a month, during an individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings. Final § 411.500(e) also explains that the maximum number of outcome payment months for each ticket is 60. This provision appeared in § 411.500(c) of the proposed rules. We are moving the provision to § 411.500(e) of the final rules where we explain what we mean by an outcome payment month.

Final § 411.500(f), which we proposed as § 411.500(d), provides a general description of the term ''outcome-milestone payment system.'' This payment system provides a schedule of payments to an EN that includes, in addition to payments during the outcome payment period, payment for completion by a beneficiary of up to four milestones directed toward the goal of permanent employment. In these final rules, we are increasing the number of milestones for which payment may be made under the outcome-milestone payment system from the two milestones we proposed in the NPRM to four milestones. This is one of four major changes we are making to the outcome-milestone payment system in response to public comments, all of which we discuss more fully below.

In addition, in these final rules we are modifying final § 411.500(f) to clarify that the milestones for which payment may be made must occur prior to the beginning of an individual's outcome payment period. We are also clarifying that the payments which may be made to an EN under the outcome-milestone payment system consist of milestone payments which may be made for any milestones occurring prior to the individual's outcome payment period, as well as any outcome payments which may be made for months during the individual's outcome payment period. We deleted the last sentence in proposed section 411.500(d) that compared the total payments under the outcome-milestone payment system, because this is stated in section 411.525(a).

Section 1148(c) of the Act permits each State VR agency to participate in the program as an EN with respect to a disabled beneficiary. When the State VR agency elects to participate in the Ticket to Work program as an EN with respect to a disabled beneficiary, we will pay the State VR agency in accordance with its elected EN payment system. If the State VR agency chooses not to participate as an EN with respect to a disabled beneficiary, we will pay the State VR agency for services provided to that beneficiary in accordance with the cost reimbursement payment system under sections 222(d) and 1615(d) and (e) of the Act. Our regulations concerning this cost reimbursement payment system are at 20 CFR 404.2101 through 404.2127 and 416.2201 through 416.2227. Payments to State VR agencies under the Ticket to Work program are discussed in §§ 411.510 and 411.585.

Each provider will elect, in writing, the EN payment system which it will be paid under when it agrees to become an EN. Similarly, each State VR agency will notify us in writing regarding which EN payment system it will use when it chooses to function as an EN for a beneficiary with a ticket. We will periodically offer each EN (including each State VR agency) the opportunity to change its elected payment system. If the EN (or State VR agency) does change its elected payment system, the change will apply only to tickets assigned to the EN (or State VR agency) after SSA is notified about the change in the elected payment system. These provisions, including the frequency of opportunity for an EN to change its payment system, are discussed in §§ 411.505 through 411.520.

In the final rule, we are making a number of changes to §§ 411.505 through 411.520. These changes correct grammatical errors and clarify our intentions, but do not change the intent of the proposed sections.

- In final § 411.505 we are combining the first two sentences concerning an EN's choice of payment systems into one sentence.
- In final § 411.510(b) we are placing a new parenthetical sentence between the two sentences we proposed. The first sentence of this paragraph explains that a State VR agency must communicate its decision to serve a beneficiary to the PM. The new second sentence provides a reference to that portion of the final rule where we discuss the PM and its role in the Ticket to Work program.
- In final § 411.515(a) we are making some editorial changes to the second sentence and clarifying the third sentence to note what day in the month an EN's payment system election becomes effective. Also, we are adding a new sentence to the end of this paragraph which clarifies that a State VR agency may also change its elected EN payment system.
- In final § 411.515(b) we are making some editorial changes and expanding the explanation of when the 12-month period for making a change in an EN payment system for any reason ends. We had proposed that the period would end with the 12th month following the month in which the EN first elects an EN payment system. The final rule adds an alternative month, the 12th month after the month we implement the Ticket to Work program in the State in which the EN (or State VR agency) operates, if it is later.
- In final § 411.515(c) we are correcting grammatical errors and deleting the date in the last sentence because it is unnecessary. This sentence notes that we will offer ENs the opportunity to make a change in their elected payment systems at least every 18 months.
- In final § 411.520 we are correcting grammatical errors in the title and text and clarifying that the rule applies to State VR agencies as well as to ENs.

Sections 411.525 through 411.565 provide our rules for computing payments to ENs under the two EN payment systems. They also describe what payments may be made and when, and discuss allocating payments to multiple ENs to whom the ticket was assigned at different times.

Sections 1148(h)(2) and (h)(3) of the Act provide that the outcome payment system and the outcome-milestone payment system shall provide for a schedule of payments to an EN, in connection with a beneficiary who assigns a ticket to the EN, for each month, during the individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits based on disability or blindness are not payable to the individual because of work or earnings. There can be a maximum of 60 outcome payment months and, therefore, a maximum of 60 monthly outcome payments. In § 411.525(a), we explain that we will calculate payments for outcome payment months under both EN payment systems using the payment calculation base as defined in § 411.500(a)(1) or (a)(2). We deleted the second sentence in proposed § 411.525(a). The proposed sentence referred to the fact that the payment

calculation base we use to compute the value of payments for outcome months attained in one calendar year is based on the preceding calendar year's national average disability benefit payment information. This is simply a restatement of the definition of the payment calculation base that is found in the references cited in the first sentence of § 411.525(a), which we did not change.

Section 411.525(a)(1)(i) discusses payments under the outcome payment system, explaining that an EN is eligible for a monthly outcome payment for each month for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings. This section also provides that monthly payments under the outcome payment system will be 40 percent of the payment calculation base. This percentage is the maximum the law allows at the beginning of the program. Under the outcome payment system, each monthly outcome payment is the same during a calendar year. At the end of each calendar year, we will refigure the payment calculation base for the next year. For clarity, we combined the last two sentences of proposed § 411.525(a)(1)(i) and added a reference to § 411.550. We also noted that we will round our computation of the outcome payment to the nearest whole dollar.

Section 411.525(a)(1)(ii) provides criteria for determining whether a month occurring after the month in which a beneficiary's entitlement to Social Security disability benefits ends or eligibility for SSI benefits based on disability or blindness terminates due to work activity or earnings will be considered to be an outcome payment month. We are making two changes to the rules we proposed. First, in final § 411.525(a)(1)(ii), we are substituting the word ''with'' for the word ''in'' to clarify that the months we are talking about are those after the month ''with'' which such entitlement ends or eligibility terminates. Second, in § 411.525(a)(1)(ii)(A), we are clarifying that the level of earnings required must be more than the SGA threshold amount specified in 20 CFR 404.1574(b)(2) (or 20 CFR 404.1584(d) for individuals who are statutorily blind). We had proposed that earnings could be at or above the SGA dollar amount, but this is ambiguous in that earnings at the dollar amount specified in 20 CFR 404.1574(b)(2) and 404.1584(d) are not indicative of SGA, while earnings above the SGA threshold amounts in the referenced rules are. It was our intent in this section, as well as in proposed § 411.535, to require that earnings exceed the monthly SGA threshold amount.

As a result of these changes, final § 411.525(a)(1)(ii) provides two criteria for us to use when determining whether we will consider any month after the month with which disability entitlement ends or eligibility terminates because of work or earnings to be an outcome payment month. First, the individual must have gross earnings from employment (or net earnings from self-employment) in that month that are more than the SGA threshold dollar amount in 20 CFR 404.1574(b)(2) (for an individual who is not statutorily blind) or in 20 CFR 404.1584(d) (for an individual who is statutorily blind). Second, the individual cannot be entitled to any monthly benefits under title II or eligible for any benefits under title XVI for that month.

Section 411.525(a)(2) explains what payments we can make to an EN under the outcome-milestone payment system. This system provides payments to an EN when the beneficiary achieves milestones directed toward the goal of permanent employment. Payments for the milestones achieved come before, and are in addition to, outcome payments made during the outcome payment period. For clarity, we inserted a new sentence after the first one we proposed. It notes that milestones must occur prior to the beginning of the beneficiary's outcome payment period and meet the requirements of § 411.535. Also, consistent with changes we are making elsewhere in these final rules, we are amending the first sentence of § 411.525(a)(2) to state that we may pay an EN for up to four milestones achieved by a beneficiary who assigned his or her ticket to the EN.

Section 411.525(b) explains the provision in section 1148(h)(3)(C) of the Act concerning the limitation on total payments to an EN under the outcome-milestone payment system. The Act requires us to design the outcome-milestone payment system so that an EN's total payments with respect to each beneficiary is less than, on a net present value basis, the total amount the EN would receive if paid under the outcome payment system. In the second sentence of § 411.525(b) we explain that an EN's total potential payments under the outcome-milestone payment system will be about 85 percent of the total that would be payable under the outcome payment system for the same beneficiary.

Section 411.525(c) explains that we will pay an EN to whom a ticket has been assigned only for milestones or outcomes that are achieved prior to the month in which an individual's ticket terminates, as described in § 411.155. We will not pay milestone or outcome payments based on an individual's work activity or earnings in or after the month a ticket terminates.

Sections 411.530 through 411.545 provide our rules for computing payments to ENs under the outcome-milestone payment system. In response to the public comments, we are making four major changes to this EN payment system.

- First, we are adding two milestones. We describe them in § 411.535.
- Second, we are doubling the total value of the potential milestone payments. We provide these payment amounts in § 411.540.
- Third, we are spreading, over 60 months as opposed to 12, the outcome payment reductions made on account of milestone payments received. We discuss this reduction in § 411.530.
- Fourth, we are substituting a flat outcome payment rate of 34 percent for the graduated monthly outcome payments we proposed. We discuss how we calculate the payment amounts for outcome payment months under the outcome-milestone payment system in § 411.545.

Section 411.530 describes how we will reduce outcome payments under the outcome-milestone payment system when an EN receives milestone payments. In the NPRM, we proposed to reduce the first 12 outcome payments by the amount paid out as milestone payments. However, in response to public comments, we are extending the reduction period over the full 60 months of the outcome payment period. In addition, we are clarifying two points in final § 411.530. First, we explain that an EN's outcome payments will be reduced due to the milestone payments received by that EN, not due to milestone payments paid to another EN. Second, we are broadening the language in the final rule by deleting the word ''already'' from the language we proposed. This change allows for adjustments should we make a retroactive payment for a milestone that a beneficiary achieved before the outcome payment period began.

Section 411.535 provides the milestone requirements. We are making three changes to this section. First, we are clarifying that the milestones occur after the date on which the ticket was first assigned and the beneficiary starts to work. Just as the outcome payment period cannot begin until after the date the beneficiary first assigns a ticket, a beneficiary cannot begin to attain a milestone until after he or she first assigns the ticket. Second, as we explained in the changes we are making

to § 411.525(a)(1)(ii)(A), we are clarifying that the level of a beneficiary's monthly earnings required for a milestone must be more than the SGA threshold amount. Third, we are including two additional milestones. The first milestone we are adding is met when a beneficiary works for one calendar month and has gross earnings from employment (or net earnings from self-employment) for that month that are more than the SGA threshold amount. The other milestone we are adding, which is the fourth milestone, is met when a beneficiary works for 12 calendar months within a 15-month period and has gross earnings from employment (or net earnings from self-employment) for each of the 12 months that are more than the SGA threshold amount. As a result of these additions, we are renumbering proposed milestones one and two as final milestones two and three. These milestones also require work at more than the SGA threshold amount for three and seven months, respectively, within a 12-month period. Additionally, in § 411.535 we are providing that any of the work months used to meet the first, second, or third milestone may be used to meet a subsequent milestone.

Section 411.540 provides how we will calculate the payment for each milestone. In the proposed rules we provided for the payment of two milestones and based their calculation on a percentage of the payment calculation base that together represented approximately 10 percent of the total payments possible under the outcome-milestone payment system. In final § 411.540 we are not changing our method of computing milestone payments or revising the payment percentages for the two milestones we proposed, but we are adding two more milestones and the net effect is a doubling of the total value of the milestone payments. The value of the first additional milestone payment is equal to 34 percent of the payment calculation base, and the value of the other additional milestone payment is equal to 170 percent of the payment calculation base. The total value of the additional milestone payments is equal to approximately 10 percent of the potential payments possible under the outcome-milestone payment system. When combined with the total value of the milestone payments we originally proposed and which we are retaining in these final rules, the total value of the four potential milestone payments under the outcome-milestone payment system is equal to approximately 20 percent of the total possible payments available under the outcome-milestone payment system.

We are also making four other changes to final § 411.540. First, we are stating that after we multiply the applicable milestone percentage by the payment calculation base, we will round the resulting milestone payment computation to the nearest whole dollar. Second, we are adding two paragraphs that identify the attainment month for each of the two additional milestones. This month is important because we use the payment calculation base for the calendar year in which the attainment month occurs when computing the milestone payment. Third, we are redesignating proposed paragraphs (a) and (b) as paragraphs (b) and (c) and proposed paragraphs (c) and (d) as paragraphs (f) and (g). These paragraphs discuss the payment calculations and attainment months for the two milestones we proposed. Fourth, we are deleting the second sentence we proposed in paragraphs (a) and (b), now final paragraphs (b) and (c). The sentence referred to the two proposed milestone payments as being equal to two and four outcome payments, respectively. Technically, this is an incorrect statement because outcome payments under the outcome-milestone payment system will vary depending on how much has been paid in milestone payments.

Section 411.545 states how, under the outcome-milestone payment system, we will calculate the amount of the outcome payment. We had proposed graduated monthly outcome payments. However, in response to public comments, we are substituting a flat outcome payment rate for the one we proposed. This rate is 34 percent of the payment calculation base for the calendar year in which the outcome payment month occurs, rounded to the nearest whole dollar, and then reduced, if necessary, as described in § 411.530. This flat rate makes the total potential payments under the outcome-milestone payment system about 85 percent of the total potential payments that could be made under the outcome payment system. We did not change the rate differential between the two EN payment systems as many commenters suggested and explain our reasons for this in the responses to the public comments below.

Section 411.550 provides the payment amounts for outcome payment months under the outcome payment system. An outcome payment under the outcome payment system is equal to 40 percent of the applicable payment calculation base. Consistent with clarifications we are making in §§ 411.540 and 411.545, we are modifying § 411.550 to state that we will round our computation of the outcome payment to the nearest whole dollar.

Section 411.555 provides that an EN may generally keep the milestone and outcome payments it receives under its elected EN payment system, even if the beneficiary does not sustain work for all 60 outcome payment months. The proposed rules for this section, by reference to § 411.560, indicated that retroactive adjustments to payments already received by ENs may occur when we allocate a prior payment with another EN. In the final rules, we expand § 411.555. We placed the general rule allowing ENs to keep the milestone and outcome payments for which they are eligible in paragraph (a) and added paragraphs (b) and (c). Paragraph (b) discusses the adjustments we may have to make should we determine that we paid an EN an incorrect amount. Paragraph (c) refers to the EN notification and dispute resolution process we have for overpayments and underpayments.

Sections 411.560 and 411.565 explain that it is possible to pay more than one EN for the same milestone or outcome payment month. In this situation, the payment will be allocated among the ENs that qualify for payment. Section 1148(e)(3) of the Act provides that the PM will determine the allocation based on the services provided by each EN. It also is possible to pay more than one EN for different milestones or outcome payment months on the same ticket. When more than one EN is eligible for payment with respect to a ticket, we will pay each EN in accordance with its elected payment system at the time the ticket was assigned to each EN.

In response to public comments, we are expanding the discussion in the last sentence of proposed § 411.560 to clarify how the PM will make a payment allocation determination when more than one EN qualifies for a payment. The PM will base its determination on the contribution of services provided by each EN toward the achievement of the outcomes or milestones. Also, outcome and milestone payments will not be increased because the payments are shared between two ENs. In addition to these changes, we are correcting grammatical errors in the title of § 411.565.

Section 411.570 provides that the Act prohibits an EN from requesting or accepting compensation from a beneficiary for the EN's services.

Section 411.575 describes how an EN will request payment for either a milestone payment or an outcome payment month. The EN will make a

written request to the PM for payment for each milestone. The request will be accompanied by evidence showing that the milestone was achieved. We do not have to stop a beneficiary's monthly cash payment in order to pay a milestone payment to an EN.

For outcome payments under either EN payment system, an EN must also submit a written request for payment to the PM. Since outcome payments cannot be made unless the beneficiary has sufficient work or earnings to reduce the Federal cash benefits to zero, we are retaining the general requirement we proposed for an EN's payment request to be accompanied by evidence of the beneficiary's work or earnings. However, in response to public comments, we are making three changes to § 411.575(b). First, we are providing an exception to the general requirement for evidence of a beneficiary's work or earnings in order to cover those situations in which the EN requesting the payment does not currently hold the ticket because it is unassigned or reassigned to another EN. Second, we are allowing the EN to submit its request for payment and evidence of work or earnings on a quarterly basis, rather than on a monthly or bimonthly basis as we proposed. Third, we are incorporating the rules we proposed in §§ 411.575(b)(3) through (5) in § 411.575(b)(3), and deleting §§ 411.575(b)(3) through (5).

In addition to these changes, we are making other clarifying changes to § 411.575. We are adding three new paragraphs at § 411.575(a)(1)(ii), (iii) and (iv) to discuss the requirements for an EN to receive a milestone payment. These requirements are: (1) The milestone must occur prior to the outcome payment period as defined in § 411.500(b), (2) the provisions in § 411.535 must be satisfied, and (3) the milestone cannot occur in or after the month in which the ticket terminates as defined in § 411.155. We also are modifying the language in final § 411.575(a)(1)(i), which was proposed as § 411.575(a)(1). The revised language clarifies that we will pay an EN for milestones only if the EN's elected payment system in effect at the time the beneficiary assigned the ticket to the EN was the outcome-milestone payment system. The wording we proposed had suggested that the payment system election and ticket assignment had to occur simultaneously and this was incorrect. Finally, we added paragraph (b)(1)(iii) to final § 411.575 to clarify that in addition to the other requirements listed, we will pay an EN for an outcome payment month only if the ticket has not terminated for any of the reasons listed in § 411.155.

Section 411.580 explains that an EN must first have had the ticket assigned to it before it can be eligible to receive milestone or outcome payments.

As a beneficiary is free to choose where to assign a ticket, the opening paragraph of § 411.585 explains that a State VR agency and an EN can both be eligible for payment on a ticket if the State VR agency elects to be paid as an EN. Each entity can be paid as an EN under its respective EN payment system. If the State VR agency chooses to serve a beneficiary with a ticket and to be paid under the cost reimbursement payment system, then we will pay the State VR agency under the cost reimbursement payment system if it meets the criteria for reimbursement and if we have not first paid an EN under its elected payment system with respect to the same beneficiary and ticket. For each ticket, a payment either under the cost reimbursement payment system or under an elected EN payment system will exclude any payment under the other payment system. Absent this restriction, it would be possible to pay separately under both the cost reimbursement payment system and under the EN payment systems such amounts as, when combined, would exceed the statutory limitation of one or both of these payment systems for serving the same beneficiary under the same ticket.

In response to a public comment, we are cross-referring § 411.560 in the opening paragraph of § 411.585. Section 411.560 explains how the PM will make a determination of payment allocation should more than one entity qualify for payment as an EN.

Section 411.587 is a new section that we are adding in response to a comment. It explains which provider we will pay if, with respect to the same ticket, we receive two requests for payment and one request is from a provider that elected an EN payment system and the other request is from a State VR agency that elected payment under the cost reimbursement payment system.

Section 411.590 describes what an EN or State VR agency serving as an EN can do if either disagrees with our decision on a payment request it submits. This section also explains that an EN cannot appeal our determination about a beneficiary's right to benefits even when that determination affects the payment to an EN. In the final rules, we are broadening paragraph (d) of § 411.590 to clarify that any determination we make about a beneficiary's right to disability cash benefits, not just a determination that a beneficiary appeals, could affect an EN's payment or result in an adjustment to payments already made to an EN. In addition, we made some editorial changes throughout this section.

Section 411.595 identifies various methods we will use to monitor the EN payment systems for financial integrity. Section 411.597 states that we will periodically review the conditions affecting payment under the two EN payment systems to determine if these payment systems are providing adequate incentives and appropriate economies for ENs to assist beneficiaries to enter the workforce.

Subpart I—Ticket to Work Program Dispute Resolution

Section 1148(d)(7) of the Act requires us to provide for a mechanism for resolving disputes between beneficiaries and ENs, between ENs and PMs, and between PMs and service providers. As part of this process, we are required to provide a party to a dispute a reasonable opportunity for a full and fair review of the matter in dispute. Finally, beneficiaries and State VR agencies may have disputes. The various dispute resolution mechanisms are discussed below.

PM and EN Disputes With SSA

Since PMs and ENs, other than State VR agencies functioning as ENs, will operate under contracts with SSA, disputes between SSA and PMs and between SSA and ENs that are not State VR agencies will be subject to the dispute resolution procedures contained in the contracts with SSA.

Disputes between Beneficiaries and ENs That Are Not State VR Agencies

There is a three-step process for resolving disputes between beneficiaries and ENs that are not State VR agencies. This three-step process will ensure that both beneficiaries and ENs have the opportunity to resolve disputes using informal means.

As a first step in the dispute resolution process, each EN is required to have an internal grievance procedure whereby beneficiaries have the opportunity to work with representatives of the EN to try to resolve any disputes arising during the implementation or amending of an IWP. If the dispute is not resolved using the EN's internal grievance procedures, both the beneficiary and the EN will have the option of contacting the PM for assistance in resolving the dispute. Upon request, the PM will conduct a full review of the matter in dispute and

make a recommendation to the beneficiary and the EN as to how the dispute might be resolved (see § 411.615). This second step is intended to provide the parties to the dispute the opportunity to present their case before an impartial third party, the PM. The third step involves bringing the dispute to SSA.

Section 411.605 explains the responsibilities of an EN that is not a State VR agency regarding this dispute resolution process, including informing beneficiaries of the availability of assistance from the State Protection and Advocacy (P&A) system at every step in the dispute resolution process. Section 411.610 identifies specific points in the rehabilitation process when an EN that is not a State VR agency must inform beneficiaries about the procedures for resolving disputes.

Section 411.615 describes how a disputed issue will be referred to the PM, including what information should be submitted. Section 411.620 tells how long the PM has to provide a written recommendation on how to resolve the dispute. Section 411.625 explains that if the parties to the dispute do not agree with the PM's recommendation and the dispute continues to be unresolved, either the beneficiary or the EN that is not a State VR agency has the option of bringing the dispute to the attention of SSA for resolution.

Section 411.625 also describes the information that must be submitted to SSA to facilitate our review of the dispute. Section 411.630 explains that SSA's decision is final.

Section 411.635 explains that a beneficiary has the right to be represented in the dispute resolution process under the Ticket to Work program and that the State P&A system is available to provide assistance and advocacy services to beneficiaries seeking or receiving services from ENs operating under the Ticket to Work program.

Disputes Between ENs and PMs

Section 411.650 explains that a dispute between an EN that is not a State VR agency and the PM, that does not involve an EN's payment request, will be resolved using the procedures for resolving disputes developed by the PM. If the matter cannot be resolved using these procedures, it will be forwarded to SSA for resolution. Section 411.655 explains how a PM will refer disputes to us. Section 411.660 explains that SSA's decision on a dispute between an EN that is not a State VR agency and a PM is final.

A dispute over a payment request submitted by an EN, including a State VR agency serving as an EN, will be resolved using the dispute resolution procedures contained in § 411.590.

Disputes Between Service Providers and PMs

We are required to provide a mechanism for resolving disputes between service providers and PMs. Most service providers approved to serve beneficiaries under the Ticket to Work program will be serving as ENs. Disputes between ENs and PMs over payments are discussed in subpart H. Other disputes between ENs and PMs are discussed above, and in §§ 411.650, 411.655, and 411.660. State VR agencies that choose not to serve beneficiaries with tickets as ENs will be the only other service providers having a relationship with a PM under the Ticket to Work program. Disputes between a State VR agency that is not functioning as an EN and a PM, that involve issues related to ticket assignment and do not involve a request for payment or other reimbursement issue, will be handled in accordance with the PM's dispute resolution procedures. A dispute over a payment request submitted by a State VR agency which is serving a beneficiary with a ticket under the vocational rehabilitation cost reimbursement system (see sections 222(d) and 1615(d) of the Social Security Act) will be resolved under existing regulations governing the resolution of disputes regarding a payment request (see 20 CFR §§ 404.2127(a) and 416.2227(a)).

Disputes Between Beneficiaries and State VR Agencies

Section 411.640 explains that the dispute resolution procedures in the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), apply to any dispute arising between a disabled beneficiary and a State VR agency, regardless of whether the services are being provided under one of the EN payment systems or under the cost reimbursement payment system authorized under sections 222(d) and 1615(d) of the Social Security Act.

In response to comments on the proposed rules, we are revising rules in subpart I (§§ 411.600, 411.605, 411.610, 411.615, 411.625, 411.630, 411.635, 411.640, and 411.650) to clarify whether they refer to ENs that are not State VR agencies, or those that are State VR agencies.

Subpart J—The Ticket to Work Program and Alternate Participants Under the Programs for Payments for Vocational Rehabilitation Services

Section 101(d) of Public Law 106–170 provides for a graduated implementation of the Ticket to Work Program. By January 1, 2004, the program will be operating in all States and U.S. territories.

Section 1148(d)(4)(B) of the Act requires the Commissioner, in any State where the Ticket to Work program is implemented, to enter into agreements with any alternate participant that is operating under the authority of section 222(d)(2) of the Act in the State as of the date of enactment of Public Law 106–170 if the alternate participant chooses to serve as an EN under the program.

Subpart J of these regulations describes how implementation of the Ticket to Work program affects the current alternate participant payment programs under 20 CFR 404.2101 *et seq.* and 416.2201 *et seq.* Section 411.700 explains what an alternate participant is. Sections 411.705 and 411.710 explain that an approved alternate participant has the option of becoming an EN when the Ticket to Work program is implemented in a State and tells an alternate participant what it must do to become an EN. Sections 411.715 through 411.730 describe how the transition process will occur for alternate participants who choose to become ENs. These sections explain how SSA will handle payments related to beneficiaries who were being served by alternate participants under existing employment plans prior to the Ticket to Work program being implemented in the State and the alternate participant becoming an EN. These sections also provide that SSA will not provide reimbursement for any services provided to a beneficiary under the alternate participant payment system after December 31, 2003.

Public Comments on the Notice of Proposed Rulemaking

When we published the NPRM in the **Federal Register** on December 28, 2000 (65 FR 82844), we provided interested parties 60 days to submit comments. We received comments from over 400 commenters, including national, State and community-based agencies and private organizations serving people with disabilities, beneficiaries, and other individuals. We considered carefully the comments we received on the proposed rules in publishing these final regulations. The comments we received and our responses to the comments are set forth below. Although

we condensed, summarized, or paraphrased the comments, we believe that we have expressed the views accurately and have responded to all of the relevant issues raised.

Comments and Responses

Subpart B—Tickets Under the Ticket to Work Program

Comment: Several commenters indicated that we should delay the issuance of tickets until these final regulations were published.

Response: After consideration of the public comments on our proposed rules as well as other views on the best time to begin the release of the tickets, we have decided to delay releasing tickets until after these final regulations are effective. These regulations are effective 30 days after the date of their publication in the **Federal Register**. We believe that this will allow for the development of an infrastructure of public and private sector employment networks to serve beneficiaries who receive a ticket. We also believe that it is critical to issue tickets as soon as possible after these regulations are effective.

Section 411.120 What Is a Ticket Under the Ticket to Work Program

Comment: One commenter suggested that, in the interest of making these regulations user-friendly, we add a cross-reference from § 411.120, regarding what is a ticket under the Ticket to Work Program, to § 411.140, which describes when an individual can assign the ticket.

Response: We are not adopting this comment. However, we agree that this section requires clarification to include a more complete description of the format and wording of the ticket, as provided by section 101(e)(2) of Public Law 106–170. Accordingly, we have expanded § 411.120 in the final rules to include a fuller description of the format and wording of the ticket.

Section 411.125 Who is Eligible To Receive a Ticket Under the Ticket to Work Program?

Comment: We received many comments in response to proposed § 411.125(a)(1) which provided that an individual will be eligible to receive a ticket in a month in which he or she is age 18 or older and has not attained age 65. Some commenters agreed that it would not be appropriate to provide transitional youth with tickets, as it might interfere with their pursuit of an education. The majority of commenters, though, indicated that we should allow individuals under age 18 access to a Ticket, to try to ensure that they do not begin a life-long dependency on public benefits.

Response: As we indicated in the Preamble to the proposed rules, as we gain experience with the Ticket to Work program, we plan, at a later time, to explore the possibility of expanding the age criteria for receiving a ticket to include those SSI beneficiaries age 16 and older who are eligible for disability benefit payments based on the childhood disability standard. While we are not adopting the recommendation to provide these individuals with tickets in these final rules, we are publishing a separate notice in this issue of the **Federal Register** to request public input for our consideration in developing possible approaches to serve the needs of transition-age youth with disabilities who are receiving payments under programs we administer under the Act.

Comment: Proposed § 411.125(a)(3)(i) and (ii) provide that an individual will only be eligible for a ticket in a month in which our records show that the individual's case has not been designated as a medical improvement expected (MIE) diary review case, or that we have conducted at least one continuing disability review (CDR) on such an individual and have made a final determination or decision that disability continues. Many commenters stated that we should provide tickets to beneficiaries regardless of whether they have been designated as a medical improvement expected diary review case. They stated that the MIE categorization is an administrative convenience to determine the frequency of CDRs, and is not a sufficiently precise tool to deny beneficiaries immediate access to a ticket. Others indicated that SSA should examine, on a disability-by-disability basis, which people whose cases have been designated as a MIE diary case are likely to remain on the rolls after initial CDR, and issue those people a ticket. Other commenters indicated that the majority of individuals designated as MIE remain on the rolls after the first CDR, and that we would, therefore, needlessly be delaying the opportunity to participate in the Ticket to Work program for these individuals.

Response: We are not adopting this comment. As we indicated in the Preamble of the proposed rules, ''Because these beneficiaries have conditions that are expected to medically improve in a relatively short period of time, they could be expected to return to work without the need for services under the Ticket to Work program.'' Moreover, we do not believe, as some commenters stated, that the MIE classification is merely an ''administrative convenience'' and that it, therefore, has no relevance for determining who gets a ticket.

We also believe that using a medical improvement diary system to help identify beneficiaries who should receive tickets is the most administratively feasible approach currently available to us. We believe that the approach outlined in the proposed rules, and provided in these final rules, strikes the proper balance between equitable treatment of disability beneficiaries and ensuring, to the extent possible, that the resources that will be available in the Ticket to Work program are distributed in the most effective and efficient manner.

We believe that the use of the medical improvement diary system is the most practical and efficient means available to identify those beneficiaries with impairments that are expected to improve within a relatively short period of time so as to permit the individual to engage in SGA. However, we believe that it may be possible to find ways to improve that system for its use in connection with the Ticket to Work program. Therefore, we plan to conduct an evaluation of the methodology for the existing MIE category within the CDR classification system to assess possible ways to improve the system for use in identifying those beneficiaries for whom near-term medical improvement should preclude the immediate receipt of a Ticket.

Comment: Many commenters indicated that there should not be a limit on the number of tickets a person can receive in a lifetime, as long as a person is not using more than one ticket at a time. Other commenters added that a person should be eligible for another ticket when the cash value of the first one has been exhausted. They cited potential inequities involving beneficiaries (1) Whose benefits are reinstated under the provisions of section 223(i) or 1631(p) of the Act (as added by section 112 of Public Law 106–170); (2) who retain eligibility under section 1619(b) of the Act; and (3) who receive services from the State VR agency that elects payment under the cost reimbursement payment system.

Response: As in the proposed rules, § 411.125(b) of the final rules does not limit the total number of tickets that an individual may be eligible to receive during his or her lifetime under the Ticket to Work program. Rather, consistent with section 1148 of the Act, the regulation limits the number of tickets an individual may receive during any period during which the individual is either a title II disability beneficiary

or a title XVI disability beneficiary and his or her title XVI eligibility has not terminated. If an individual's entitlement to title II benefits based on disability or eligibility for title XVI benefits based on disability or blindness terminates, and the individual again becomes entitled to or eligible for benefits, the individual may be eligible to receive a new ticket.

Section 411.125(b) of the final regulations provides that an individual will not be eligible to receive more than one ticket during any period during which the individual is either: (1) Entitled to title II benefits based on disability; or (2) eligible for title XVI benefits based on disability or blindness and the eligibility has not terminated. This rule is based on section 1148 of the Act, which authorizes the Commissioner to issue ''a ticket'' to disabled beneficiaries for participation in the Ticket to Work program. The Act defines ''disabled beneficiary'' for purposes of this section to mean ''a title II disability beneficiary or a title XVI disability beneficiary.'' Section 1148 of the Act also provides that an individual is a title II disability beneficiary for each month for which the individual is entitled to title II benefits based on disability as described in that section. This section also indicates that an individual is a title XVI disability beneficiary for each month for which the individual is eligible for a Federal cash benefit under section 1611 or 1619(a) of the Act based on disability or blindness.

In addition, section 1148 of the Act indicates that an individual may be issued only one ticket while he or she is a disabled beneficiary. That section provides that the limitation on the total number of outcome payments that may be paid to an EN applies with respect to each beneficiary. Section 1148 also authorizes the Commissioner to pay an outcome payment to an EN, ''in connection with each individual who is a beneficiary, for each month, during the individual's outcome payment period, for which benefits . . . are not payable. * * *'' This section indicates that each individual who is a beneficiary has one outcome payment period, consisting of 60 months. Thus, under section 1148 of the Act, the Commissioner is authorized to pay a maximum of 60 outcome payments to an EN with respect to each individual who is a beneficiary. Accordingly, the final regulations provide that an individual may not receive more than one ticket during any period during which the individual is either a title II disability beneficiary or a title XVI disability beneficiary and his or her title XVI eligibility has not terminated.

We are adding a provision to § 411.125 in these final rules to clarify that individuals whose entitlement to title II benefits based on disability is reinstated under section 223(i) of the Act, or whose eligibility for title XVI benefits based on disability or blindness is reinstated under section 1631(p) of the Act, will be eligible to receive another ticket in the first month he or she is entitled to or is eligible for reinstated benefits, as long as the beneficiary meets certain other requirements for eligibility for a ticket.

Comment: Many commenters stated that SSA must address issues specifically related to individuals who are entitled to child's insurance benefits as disabled adult children (DACs). They indicated that our title II program regulations should allow these beneficiaries to move on and off the title II program (in other words, to have their benefits reinstated) to the same extent that other beneficiaries with disabilities are allowed to do so. Otherwise, they argue, the purpose of the Ticket program will be thwarted.

Response: Section 202(d)(1)(B) of the Act provides that an individual who is an adult child (18 years old or older) of an insured person who is entitled to old-age or disability benefits, or who has died, is eligible for benefits if the individual is unmarried and has a disability that began before the individual is 22 years old. Under the provisions of section 202(d)(6) of the Act, an individual whose entitlement to child's insurance benefits based on disability has terminated may again become entitled to such benefits if he or she has not married and he or she is under a disability which began before the end of the 84th month following the month in which his or her most recent entitlement to child's insurance benefits terminated because he or she ceased to be under a disability. Therefore, these individuals would be eligible to receive another ticket in the first month they again become entitled to benefits, as long as they meet all other requirements for eligibility for a ticket.

Further, such individuals whose benefits are reinstated under section 223(i) of the Act also will be eligible to receive another ticket in the first month they are entitled to reinstated benefits, as long as they meet certain other requirements for eligibility for a ticket.

Comment: Several commenters stated that we should eliminate the requirement in proposed § 411.125(a)(2) that a beneficiary be in current pay status in order to be eligible to receive a ticket. They stated that this provision would disadvantage individuals who are in overpayment, extended period of eligibility or 1619(b) status.

Response: The rule which provides that a disabled or blind title XVI beneficiary may be eligible to receive a ticket only in a month in which his or her Federal SSI cash benefits are not suspended is based on section 1148 of the Act. Under section 1148, the Commissioner is authorized to issue a ticket to a title XVI disability beneficiary for participation in the Ticket to Work program. This section also provides that an individual is a title XVI disability beneficiary for each month for which the individual is eligible for a Federal cash benefit under section 1611 or 1619(a) of the Act based on disability or blindness. If payment of an individual's monthly Federal SSI cash benefits is suspended under 20 CFR 416.1321–416.1330 due to ineligibility, such individual is not a title XVI disability beneficiary for that month for purposes of section 1148 of the Act since he or she is not eligible for Federal SSI cash benefits.

We are providing a similar requirement regarding current pay status for title II disability beneficiaries to make the criteria for issuing a ticket the same for title II beneficiaries as for title XVI beneficiaries. This will provide consistent and equitable treatment of beneficiaries under the two programs with respect to the issuance of tickets. We also believe that limiting the issuance of tickets to title II disability beneficiaries who are receiving cash benefits is consistent with the purpose of the Ticket to Work program, which is to enable beneficiaries to seek the services they need to return to work and reduce their dependency on cash benefits. In addition, we believe that providing tickets only to title II disability beneficiaries who are receiving title II cash benefits is consistent with Congress' expectation regarding who would be eligible to participate in the Ticket to Work program. In its report on the legislation to establish the Ticket to Work program, the House of Representatives Committee on Ways and Means explained that the legislation would ''define 'disabled beneficiary' for purposes of Program participation to include SSI disability benefits recipients and Social Security beneficiaries receiving disability insurance, disabled widow's, and childhood disability benefits.'' (H.R. Rep. No. 393, 106th Cong., 1st Sess. 41 (1999).)

Section 411.140 When Can I Assign My Ticket and How?

Comment: One commenter indicated that we should revise proposed § 411.140(b) to clarify that individuals may assign the ticket to a State VR agency if they are eligible to receive VR services according to 34 CFR 361.42. The commenter also indicated that we should revise § 411.145(b) to clarify that a State VR agency does not have discretion on when it will or will not serve an individual. Rather, they indicated, Title I of the Rehabilitation Act provides that a VR agency must cease providing services to individuals who are no longer eligible for VR services. They further suggested that we revise both § 411.140(c) and 411.150(b) to reflect that the VR counselor must agree to and sign an Individualized Plan for Employment.

Response: We agree, and we have made the appropriate changes to §§ 411.140, 411.145 and 411.150.

Section 411.150 Can I Reassign My Ticket to a Different EN or to the State VR Agency?

Comment: Some commenters indicated that we should limit, in § 411.150, the reasons a beneficiary can reassign a ticket. They also suggested that we impose limits as to how many times a beneficiary will be allowed to reassign a ticket.

Response: Section 1148(e)(3) of the Act provides that the PM will ensure that beneficiaries are allowed changes in ENs without being deemed to have rejected services under the program. Therefore, we are not adopting this comment.

Comment: We received a comment which we decided to group with the comments on this section because it most closely related to reassigning a ticket to a different EN or State VR agency. The commenter asked if, from a State VR agency's perspective, a legal guardian's decisions with regard to the Ticket to Work program would be controlling. For example, would we require a legal guardian's permission before the ticket could be taken back from one EN and reassigned to another?

Response: We assume that the commenter is referring to a court-appointed legal guardian of an individual who has been declared legally incompetent. In such a case, the legal guardian is responsible for making decisions on behalf of the individual and for exercising any rights of such individual. In the Ticket to Work program, the court-appointed legal guardian of a beneficiary who is legally incompetent would be responsible for exercising the beneficiary's rights under the program, including deciding whether the beneficiary's ticket should be assigned or reassigned to an EN. In such circumstances, in order for the beneficiary's ticket to be assigned or reassigned, the IWP under which services are provided to the beneficiary by an EN must be agreed to and signed by the beneficiary's court-appointed legal guardian. According to the Rehabilitation Services Administration, the same would be true for approval of an IPE under which services are provided by a State VR agency. In the case of a beneficiary who is a legally competent adult, it is up to the beneficiary to decide whether to assign or reassign his or her ticket.

Section 411.155 When Does My Ticket Terminate?

Comment: One commenter stated that we should revise § 411.155 to indicate that we will pay a State VR agency after the month in which a ticket terminates if the VR agency has elected and is eligible to claim payment under the cost reimbursement payment system authorized under sections 222(d) and 1615(d) and (e) of the Social Security Act. This modification would clarify, according to the commenter, that if a state VR agency chooses current law reimbursement, which is possible on a case-by-case basis, the use of a ticket is not relevant, and the VR agency can be paid for services.

Response: We do not agree with this recommendation to revise the final rules because it is unnecessary. The final rules provide that we will make payment to a State VR agency under the cost reimbursement payment system if all of the following conditions exist: (1) the beneficiary's ticket is assigned to the State VR agency under the rules in subpart F; (2) the cost reimbursement payment system is the State VR agency's payment system with respect to that beneficiary; (3) we have not made payment to an EN or a State VR agency functioning as an EN under one of the EN payment systems with respect to the ticket, as discussed in § 411.585; and (4) the requirements of sections 222(d) and 1615(d) of the Act and applicable regulations relating to cost reimbursement are met.

Subpart C—Suspension of Continuing Disability Reviews for Beneficiaries Who Are Using a Ticket

Section 411.160 What Does This Subpart Do?

Comment: One commenter noted that the Ticket to Work program exempts beneficiaries who are using a ticket from medical reviews, but not work reviews. The commenter indicated that the language in § 411.160(b) would confuse beneficiaries and would not allay beneficiary fears about continuing disability reviews (CDRs) because SSA uses the term continuing disability reviews in the context of the disability programs when referring to the process of conducting both medical and work reviews. The commenter suggested that we establish a different process for work reviews.

Response: We did not establish a different process for work reviews because programmatically they are a type of CDR. However, in response to this comment, we clarified the language in final § 411.160(b). The revised language references our rules on when we may conduct a CDR (i.e. 20 CFR 404.1589, 416.989, and 416.989a) to determine whether an individual remains eligible for disability-based benefits. It then explains that, for purposes of subpart C, the term continuing disability review includes the medical reviews we conduct when determining if a beneficiary's medical condition has improved, as described in 20 CFR 404.1594 and 416.994, but does not include the CDRs we do under 20 CFR 404.1594(d)(5) to determine whether a title II beneficiary's work activity demonstrates the ability to engage in SGA. In light of this clarification, we removed the parenthetical reference to §§ 404.1594 and 416.994 that we included in proposed § 411.165.

Section 411.165 How Does Being in the Ticket to Work Program Affect My Continuing Disability Reviews?

Comment: Two commenters recommended that we clarify proposed § 411.165 by referencing the specific sections that explain when the period of using a ticket begins (§ 411.170) and ends (§ 411.171).

Response: We concur with the recommendation and are adding these cross-references to final § 411.165.

Comment: Another commenter, referencing proposed § 411.165, expressed concern that if a beneficiary places his or her ticket into inactive status (e.g. due to health reasons) we would be able to consider the activities he or she engaged in while actively participating in the Ticket to Work program when we conduct a subsequent medical CDR. The commenter said that our consideration of such activities would create a significant disincentive for beneficiaries to participate in the Ticket to Work program and recommended that we amend final § 411.165 to assure beneficiaries that we

would not consider these activities when we conduct subsequent medical CDRs.

Response: Section 1148 of the Act does not specifically address the factors we consider when we conduct medical CDRs and thus we are not amending § 411.165 in the final rules in the manner suggested. However, we will address this issue when we implement section 111 of Public Law 106–170, Work Activity Standard as a Basis for Review of an Individual's Disabled Status, which becomes effective on January 1, 2002. In general, this section amends section 221 of the Act to provide that, with regard to individuals who are entitled to title II benefits based on disability, and have received these benefits for at least 24 months, we will not schedule a CDR solely as a result of work activity, and we will not use work activity engaged in by the individual as evidence that the individual is no longer disabled.

Comment: A commenter asked what happens to those beneficiaries who are eligible to use a ticket, but are already working with a provider who is not an EN. The commenter notes that these beneficiaries, unlike those who are using a Ticket, have to undergo CDRs even though they may already be making progress towards fuller employment.

Response: In order for CDRs to be suspended for an individual under section 1148(i) of the Act, the beneficiary must be using a ticket as defined by the Commissioner of Social Security. In the situation described by the commenter, the beneficiary may wish to encourage his or her current provider to become an EN.

Section 411.166 Glossary of Terms Used in This Subpart

Comment: Several comments suggested that we define the terms we use in subpart C in a central location in order to assist with the clarity and flow of the subpart.

Response: We agree and have added new § 411.166 to provide a glossary of key terms which we use in Subpart C. In new § 411.166 we explain the following eight terms:

- active participation in your employment plan
- extension period
- inactive status
- initial 24-month period
- progress review
- timely progress guidelines
- 12-month progress review period,
- using a ticket

In the proposed rules we called the ''12-month progress review period'' the ''12-month work review period'' and a ''progress review'' a ''work review.'' We renamed these concepts in these final rules to distinguish these progress reviews from the ''work reviews'' we conduct for title II beneficiaries, following the completion of their trial work periods, to determine whether their work and earnings demonstrate the ability to engage in SGA. When we do a work review under the title II disability program, we make a determination about whether an individual is no longer disabled because of work and earnings. When we do a progress review under the rules in subpart C, we are simply deciding whether a Ticket is ''in use'' so that we can determine whether an individual is exempt from periodic medical reviews.

Section 411.171 When Does the Period of Using a Ticket End?

Comment: One commenter stated we should ensure that the events cited in proposed § 411.171(b) and (c), that would signify that the period of using a ticket has ended, are not beyond the control of the individual. Proposed § 411.171(b), which is redesignated in the final rules as § 411.171(e), provides that, if a beneficiary has assigned a ticket to a State VR agency which selects the cost reimbursement payment system, the period of using a ticket will end with the 60th month for which an outcome payment would have been made had the State VR agency chosen to serve the beneficiary as an EN. Proposed § 411.171(c), which is redesignated in the final rules as § 411.171(b), provides that the period of using a ticket will end the day before the effective date of a decision under § 411.192 (which has been incorporated in final § 411.190), § 411.195, § 411.200 or § 411.205 that an individual no longer is making timely progress toward self-supporting employment.

Response: Section 1148(h)(4)(B) of the Act provides that we will make up to 60 outcome payments to an EN based on a ticket. Final § 411.171 (d) and (e), therefore, provide that the period of using a ticket will terminate at the same point, with reference to potential outcome payment months, regardless of whether a State VR agency elects to serve a beneficiary as an EN or elects to be paid under the cost reimbursement payment system. In order for the period of using a ticket to terminate in this situation, a beneficiary will have had to work 60 months with monthly earnings sufficient to preclude the payment of Social Security disability benefits and Federal SSI cash benefits.

The rules described in §§ 411.190, 411.195, 411.200 and 411.205 contemplate that the beneficiary will have the opportunity to participate in the decision-making process before the PM or SSA makes a decision that the beneficiary is no longer making timely progress toward self-supporting employment.

Comment: One commenter recommended that we add a provision to the section of the rules regarding when the period of using a ticket ends to assure that the State VR agency will receive payment for services furnished to a beneficiary when a beneficiary applies and seeks services from the State VR agency after his or her period of using a ticket has ended.

Response: The determination regarding ticket use affects whether a CDR may be initiated with respect to a beneficiary. The conduct of a CDR could affect payment to providers if the beneficiary's entitlement to or eligibility for benefits is determined to have ended for reasons other than work or earnings. The specific determination as to whether the period of using a ticket has ended for a particular beneficiary is not relevant to the determination of whether or not a State VR agency can be paid under either the cost reimbursement payment system or its elected EN payment option. Unless the restrictions on payment described in § 411.585 apply, we will pay the State VR agency if all requirements for payment are met, even if the beneficiary's ticket is not in use.

Section 411.175 What if I Assign My Ticket After a Continuing Disability Review Has Begun?

Comment: We received two comments suggesting that we add a statement to this section to indicate that, if a beneficiary chooses to have benefits continued pending an appeal of a medical cessation determination and does not prevail in the appeal, he or she may be required to repay the benefits received during this period.

Response: While we understand the concern of the commenters, we did not adopt the recommendation to add this statement to § 411.175 in these final regulations, since this section provides appropriate cross-references to §§ 404.1597a and 416.996, which provide this statement.

Comment: Two commenters indicated that, since no other individuals have CDRs conducted while they are receiving services with a ticket, we should suspend CDRs when a beneficiary assigns the ticket after a CDR has begun. The commenters suggested that allowing the individual to continue to receive services and supports through an established EN should be consistent with the legislative intent to help ensure

access and entry into improved work opportunities. They concluded that SSA has more to gain in terms of positive outcomes by allowing suspension of such reviews and having the person continue with their individual work plan.

Response: Section 1148(i) of the Act precludes the initiation of a CDR for a beneficiary who is using a ticket as defined by the Commissioner. Section 411.175 deals with the situation where a CDR is initiated before the beneficiary assigns and begins using the ticket. Mere receipt of a ticket does not preclude the conduct of a CDR. Further, § 411.175 does not preclude the beneficiary from receiving services if he or she assigns a ticket after a CDR has begun.

Section 411.180 What Is Timely Progress Toward Self-Supporting Employment?

General: By far, the overwhelming number of comments received relating to subpart C of the NPRM related to this section on timely progress toward self-supporting employment and other sections which specify the guidelines for timely progress. We have divided these comments into five topic areas. These topic areas are:

(1) Allowing the individual and the EN or State VR agency to define what timely progress is in the IWP/IPE;

(2) ''Banking'' of work performed in the initial 24-month period;

(3) Allowing enough time in the time frames for the completion of college degrees and/or other post-secondary education;

(4) Allowing for consideration of relapses, setbacks, and episodes of illness in setting time frames; and

(5) Miscellaneous, such as the complexity of the timely progress guidelines and the contention that the timely progress guidelines are more lenient than the EN payment rules.

1. Allowing the Individual and the EN or State VR Agency To Define What Timely Progress Is in the IWP/IPE

Comment: We received a large number of specific comments from various individuals and organizations recommending that we allow the individual and the EN or State VR agency to define what timely progress is in the beneficiary's IWP or IPE. In general, these commenters stated that people with disabilities have unique needs and, consequently, that the measurement of timely progress should be flexible and individualized.

Response: There appears to have been some misunderstanding that beneficiaries must meet the timely progress guidelines in order to participate in the Ticket to Work program. Therefore, we believe that it is appropriate to restate here that the timely progress guidelines are only used to determine whether a beneficiary is using a ticket for purposes of protection against initiation of a CDR as provided under section 1148(i) of the Act. Beneficiaries who do not meet the timely progress guidelines may still participate in the Ticket to Work program, receive services and generate outcome and milestone payments to ENs. However, these beneficiaries may be subject to CDRs.

With reference to the specific recommendation, we appreciate that individuals with disabilities have unique needs, and we believe that there is sufficient flexibility in our timely progress rules to accommodate these needs. Further, if we allowed the individual and the EN or State VR agency to define timely progress, it would not be possible to develop a consistent and standardized method to determine timely progress for program administration and integrity purposes. Absent these consistent standards, our ability to measure the effectiveness of the Ticket to Work program would be significantly hampered.

2. ''Banking'' of Work in the Initial 24-Month Period

Comment: There were a large number of commenters who recommended improving the timely progress guidelines by providing for ''banking'' months of work completed in the initial 24-month period. These commenters noted that many beneficiaries have disabilities that are episodic and intermittent. While some people may not be able to work right away, others might be able to work sooner but may experience difficulties later. The commenters considered that it would be more equitable if we allowed those who can work earlier than the time frames described in the proposed rules to receive credit for their work effort.

These commenters recommended that a beneficiary should be allowed to ''bank'' work months in the first two years of a beneficiary's participation in the program to count towards the work requirements in later years. They further recommended that, in year 5 and beyond, work in excess of the six-month requirement should count toward the next year's work requirements. Finally, these commenters recommended that increasing amounts of work or earnings, even if below SGA, should be evaluated as meeting the requirements for progress reviews.

Response: As a result of these recommendations, we are modifying § 411.180 and other appropriate sections to allow a beneficiary who has worked in months during the initial 24-month period to use those months of work to meet the work requirements of the first 12-month progress review period if the work was at the requisite level. However, we did not adopt the recommendations to allow for ''banking'' of work to satisfy the requirements of progress review periods beyond the first 12-month progress review period, or to consider increasing amounts of work or earnings that are below the SGA level for non-blind beneficiaries as meeting the requirements for progress reviews. These recommendations would be inconsistent with the intent of the timely progress guidelines, which is to require that beneficiaries demonstrate an increasing ability to work at levels which will reduce their dependence on cash benefits.

3. Allowing Enough Time in the Time Frames for the Completion of College Degrees and/or Other Post-Secondary Education

Comment: We received a large number of comments that indicated that the timely progress guidelines we proposed do not allow enough time for an individual to prepare for employment by pursuing a college degree and/or post-secondary education.

Response: We understand the concerns of the commenters and agree that a college degree and/or post-secondary education may enhance employment outcomes for individuals with disabilities. We anticipate that the provision we are adding in response to recommendations to allow for ''banking'' months of work will provide many beneficiaries with additional time for the pursuit of college and/or post-secondary education, while suspending CDRs for them. Further, as we have stated, the timely progress guidelines are only intended to determine whether a beneficiary will be considered to be using a ticket for purposes of suspending initiation of CDRs. Therefore, a beneficiary pursuing post-secondary education can continue to participate in the Ticket to Work program, receive services and remain in the education program. However, if the beneficiary does not meet the timely progress guidelines, he or she would be subject to CDRs.

4. Allowing for Consideration of Relapses, Setbacks and Episodes of Illness in Setting Time Frames

Comment: We received a substantial number of comments stating that the proposed timely progress guidelines would not allow for relapses, setbacks and episodes of illness.

Response: We have built into the timely progress guidelines several mechanisms that will allow for the episodic nature of many impairments. These mechanisms include the provision allowing a beneficiary to place a ticket in inactive status during the initial 24-month period; the progressive nature of the work requirements; the fact that we do not require that work activity has to be continuous to satisfy the timely progress guidelines, even in the fifth and subsequent years; and the modification that we are making in the final regulation to allow a beneficiary who has worked in months during the initial 24-month period to use those months to meet the requirements of the first 12-month progress review if the work was at the requisite level. Further, as we have stated, these guidelines are only used to determine whether a beneficiary will be considered to be using a ticket for purposes of suspension of initiation of CDRs, not to determine whether the beneficiary can participate in the Ticket to Work program.

5. Miscellaneous Comments

Comment: We received several comments from Federal and State VR agencies indicating that the active participation requirement during the initial 24-month period should be eliminated because it is not consistent with principles set forth in title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), which governs the Federal/State VR program. The commenters noted that, in contrast with our proposed requirements, the Rehabilitation Act does not set a time period for achieving an employment outcome as long as the terms of the IPE are being met.

Response: The Ticket to Work program under section 1148 of the Act is not intended to mirror the Federal/State program for rehabilitation services under title I of the Rehabilitation Act. Rather, the purpose of the Ticket to Work Program is to provide Social Security or SSI beneficiaries who are disabled or blind the opportunity to choose from a variety of providers to obtain the services and supports that they need to become self-supporting. As we have stated, the timely progress guidelines are only used to determine whether a beneficiary will be considered to be using a ticket for purposes of suspending initiation of CDRs. They are not designed to measure overall success of the program or a beneficiary's ability to participate in the program. In this context, we must establish consistent standards that would apply to both beneficiaries receiving services from ENs and to beneficiaries receiving services from State VR agencies.

Comment: One commenter remarked that the timely progress guidelines that we proposed in § 411.180 and in succeeding sections were more generous than the payment requirements that we proposed in subpart H of these rules. The commenter noted that a beneficiary could keep the CDR protection afforded by the ticket by working for as little as nine months at the SGA level over a four-year period, while an EN working with such a beneficiary may receive only nine payments. The commenter said such a funding scheme was unrealistic for those providers who do not have additional funding sources.

Response: The timely progress guidelines and the rules governing milestone and outcome payments are not designed for the same purpose. As we have stated, the timely progress guidelines only are used to determine whether a beneficiary will be considered to be using a ticket for purposes of the protection against initiation of a CDR as provided in section 1148(i) of the Act. The rules for determining if an EN or State VR agency will be eligible to receive a payment under the EN payment systems under the Ticket to Work program measure the ability of the service provider to assist beneficiaries in their efforts to become self-supporting. See subpart H for a further discussion of the EN payment systems.

Comment: Several commenters remarked that there appears to be no incentive for either an EN or a State VR agency to maintain a case open in the initial 24-month period because the regulations do not provide any financial payment for providing services to an individual in this status. These commenters predicted that if we do not change our regulations that ENs and State VR agencies will not serve beneficiaries with significant disabilities or will be quick to terminate individuals who do not make progress towards achieving SGA.

Response: The Ticket to Work program is an outcome-based program, and provides for milestone payments when a beneficiary starts to work, and/or outcome payments when Federal disability benefits are not payable to a beneficiary due to work or earnings. While there is no requirement that a beneficiary work during the initial 24-month period in order to be making timely progress, there is no penalty for or prohibition against work. In fact, we have modified the timely progress rules to specifically respond to comments that some beneficiaries can and do work early in their period of rehabilitation. In addition, enhancements to the outcome-milestone payment system described in subpart H of these rules make it possible for an EN to receive a milestone payment if a beneficiary works for only one month and has gross earnings from employment (or net earnings from self-employment) for that month that are more than the SGA threshold amount. Therefore, payment to ENs is possible during the initial 24-month period if they serve beneficiaries who work during this period.

Comment: We received three related questions about proposed §§ 411.185 and 411.190. They were: (a) What will happen to beneficiaries whose disabilities incapacitate them to the point that they remain on the disability benefit rolls after fully utilizing the ticket? (b) How much time does a consumer have to keep the ticket in inactive status? and (c) Will the beneficiary have a penalty?

Response: We will make outcome payments to ENs to which beneficiaries have assigned a ticket only if monthly cash benefits are not payable because of the performance of SGA or by reason of earnings from work. Generally, by the time 60 outcome payment months have occurred, entitlement to title II benefits based on disability or eligibility for title XVI benefits based on disability or blindness will have terminated because of work or earnings for most beneficiaries. However, these beneficiaries may be entitled to have their benefits reinstated under section 223(i) or section 1631(p) of the Act. As we explain in § 411.125 of the final rules, beneficiaries whose entitlement to or eligibility for benefits is reinstated under these sections of the Act would be eligible to receive another ticket if they meet certain other requirements for eligibility for a ticket.

The option of placing a ticket in inactive status is available to beneficiaries only during the initial 24-month period following the assignment of the ticket. During this period there is no penalty or time limit for keeping the ticket in inactive status, per se. What happens is that the clock stops and the ensuing months during which the ticket is in inactive status do not count towards the initial 24-month period. However, the ticket is considered to be

not in use and the beneficiary is subject to continuing disability reviews during this time.

Section 411.185 How Much Do I Need To Earn To Be Considered To Be Working?

Comment: One commenter questioned whether the earnings guidelines we proposed in § 411.185(a)(1) and (b)(1) for meeting the timely progress requirements during the first and second 12-month work reviews would lessen the effect of existing work incentive provisions.

Response: The earnings guidelines we proposed only deal with determining whether a beneficiary meets timely progress requirements for purposes of suspending medical CDRs. The guidelines do not affect any of the existing work incentive provisions.

Section 411.190 How is it Determined if I am Meeting the Timely Progress Guidelines?

Comment: One commenter was concerned that proposed § 411.190 may conflict with other Federal regulations governing a State VR agency's use and release of confidential information (see 34 CFR 361.38). This commenter suggested that we modify our final rule by adding a new paragraph that would require a State VR agency or an EN to satisfy all applicable Federal and State confidentiality requirements before sharing any personal information about the beneficiary with the PM.

Response: We do not believe that such a modification is necessary. Nothing in this rule overrides Federal and State confidentiality rules. We provide in 20 CFR Part 401 a description of SSA's policies and procedures related to the Privacy Act of 1974, and section 1106 of the Social Security Act concerning disclosure of information about individuals. ENs, as SSA's contractors, are subject to these rules. Similarly, § 411.375 states that State VR agencies are required to provide VR services under a plan approved under title I of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 720 *et seq.*), even when functioning as an EN. This includes the confidentiality requirement that a State VR agency must follow.

Section 411.191 Table Summarizing the Guidelines for Timely Progress Toward Self-Supporting Employment

Comment: One commenter, referencing the table in proposed § 411.191, suggested that we have one SGA level for all beneficiaries and that it be the one that currently applies to those who are blind. The commenter said the higher level would support the Ticket program's goal of transitioning beneficiaries from benefits to self-sufficiency and would encourage more beneficiaries to participate in the Ticket to Work program.

Response: We did not adopt this suggestion because the SGA level for individuals who are not blind is not the subject of these rules. The rules relating to the SGA levels for those who are not blind can be found in 20 CFR 404.1574 and 416.974, and the rules relating to the SGA levels for those who are blind can be found in 20 CFR 404.1584.

Section 411.192 What if My EN, the State VR Agency, or I Report That I Am Not Actively Participating in My Employment Plan?

Comment: One commenter suggested that we add a third choice to the two we proposed in § 411.192(a) (§ 411.190(a)(1) in the final regulations) for beneficiaries who are not actively participating in their employment plans during the initial 24-month period. It would allow them to reassign their tickets to a different EN.

Response: We did not adopt this suggestion because we state in another section of these final rules that beneficiaries will have the right to reassign their tickets to other ENs or to a State VR agency (see § 411.150(a)). Such reassignments can occur regardless of whether the beneficiaries are making timely progress toward self-supporting employment.

Section 411.195 How Will the PM Conduct My 24-Month ProgressReview?

Comment: One commenter stated that the timely progress reviews we proposed in § 411.195 did not take into consideration the fact that beneficiaries may not be able to obtain or retain employment due to circumstances beyond their control. Reasons cited included a downward turn in the economy that increases competition for available jobs, an employment goal that requires more than two years to obtain, and a lack of transportation to look for jobs. This commenter indicated that it was unfair to subject beneficiaries to medical CDRs if they fail to obtain employment through no fault of their own.

Response: The timely progress review to which this commenter referred is the 24-month progress review, which does not contain a specific requirement for work within the first 24 months after the beneficiary assigns a ticket. However, the 12-month progress reviews, which come after the 24-month progress review, contain a work requirement. We did not modify those requirements because we believe that they are sufficiently generous and flexible enough to accommodate individual needs. They do not require work in every month. They require work in three months for the first 12-month progress review period and in six months for subsequent 12-month progress review periods.

We believe these rules are consistent with the intent of the Ticket to Work program, which is to allow beneficiaries to choose from a variety of providers to obtain the services and supports that they need to become self-supporting. While beneficiaries may be subject to a CDR if they do not successfully complete the 12-month progress reviews, the Ticket does not terminate and beneficiaries may later qualify for CDR protection.

Comment: One commenter recommended rewording § 411.195(a)(1) so that it does not sound like work is not an expectation within the initial 24-month period.

Response: We agree with the comment and have reworded § 411.195 consistent with this recommendation.

Comment: We received one comment about § 411.195(a)(3). The commenter stated that the EN or State VR agencies, rather than the PM, should determine if the beneficiary can reasonably be expected to reach the goal of at least three months of work during the next 12-month work review period. The commenter continued that if we do not make this change, then this section should be deleted.

Response: We have not adopted this comment. Under the law, we had to define what it means to be using a ticket for purposes of receiving protection against initiation of a CDR. We have chosen to use clear standards (active participation in the employment plan during the first 24 months, then months of work activity at a certain level during succeeding 12-month periods). We believe it is better to have the PM, who is charged with helping us to administer the program, use the criteria we have established to help us determine whether a beneficiary will be considered to be using a ticket for purposes of CDR protection. We believe having a single entity perform these reviews will lead to more fair and efficient administration of the program.

Section 411.200 How Will the PM Conduct My Annual Work Review?

Comment: We received six comments that questioned the ability of the PM to accurately anticipate and assess timely progress for individuals whose tickets are assigned to ENs or State VR agencies.

Response: We believe that we have developed clear standards for determining whether a beneficiary is making timely progress toward self-supporting employment for purposes of being considered to be using a ticket. We further believe that it is better to have the PM, who is charged with helping us to administer the program, use these criteria to help us to determine whether a beneficiary is using a ticket for purposes of CDR protection. We believe that having a single entity perform these reviews, with significant input from ENs and State VR agencies, will lead to more fair and efficient administration of the program.

Section 411.210 What Happens if I Do Not Make Timely Progress Toward Self-Supporting Employment?

Comment: Four commenters asked us to clarify the proposed rules in § 411.210(a) to indicate whether a State VR agency would be able to receive payment under the cost-reimbursement payment system if a beneficiary, who is found to be no longer using a ticket for CDR protection purposes, continues to participate in the Ticket to Work program. Also, another commenter asked us whether a State VR agency or an EN would still be eligible for the payment option it selected should the beneficiary work but not meet the requirements for re-entering in-use status.

Response: In these final rules, we made changes to § 411.210(a) to indicate that a State VR agency which selects the cost reimbursement payment system may be eligible for payment under that system even though the beneficiary is determined to be no longer using a ticket. We also made changes to indicate that an EN or State VR agency serving a beneficiary as an EN may receive milestone or outcome payments for which it is eligible even though the beneficiary is considered to be no longer using a ticket. The proposed rules had referred only to outcome payments. Under the final rules, beneficiaries who do not meet the timely progress guidelines may continue to receive services from their service providers.

Comment: One commenter was concerned that an EN that first serves a beneficiary might not receive its appropriate share of any future EN payments if a beneficiary puts a ticket in inactive status or switches ENs when seeking to re-enter in-use status. This commenter recommended that we amend proposed § 411.210(b)(1)(ii) to provide that when a beneficiary completes the required three months of work at the requisite level for reinstatement, he/she may re-enter in-use status, provided the ticket is reassigned to the previous EN or State VR agency.

Response: We did not adopt this commenter's suggestion. We initially note that under the situation described in this section, the ticket does not have to be ''reassigned'' if it has never been taken out of assignment. This section merely provides that for a beneficiary to re-enter in-use status, his or her ticket must be assigned to an EN or State VR agency. We further believe that we do not have authority under section 1148 of the Act to restrict the beneficiary's choices regarding assigning a ticket in the manner suggested. With regard to this commenter's concerns about a former EN sharing in any future EN payments, our rules in § 411.560 allow us to allocate a payment to more than one EN when the ENs request payment for the same milestone or outcome and the beneficiary has assigned the ticket to them at different times.

Comment: A comment referenced § 411.210 and suggested adding a new provision to the regulations to indicate that if SSA determined that individuals were not using a ticket, and, after a CDR, determined that they no longer were disabled, they still could continue to receive benefits if they meet the requirements in section 225(b) of the Social Security Act.

Response: We are not adopting this recommendation to add a section to the Ticket to Work program regulations concerning the provisions for continuation of benefits. The rules for continuation of benefit payments to persons who recover medically while participating in a rehabilitation program are in 20 CFR 404.316(c), 404.337(c), 404.352(d), and 416.1338. As previously stated, we plan to publish proposed rules to amend those sections of the regulations to take account of the amendments made by section 101(b) of Public Law 106–170 to sections 225(b) and 1631(a)(6) of the Act.

Comment: This commenter also indicated that § 411.210(b)(1)(i) should be revised to make the requirement for re-entering in-use status during the initial 24-month period or in the 24-month progress review consistent with the actual requirements for this phase, in other words, actively participating in the activities outlined in the IWP/IPE, rather than completing three months of work at the prescribed level. The commenter indicated that this provision is not consistent with the purpose, as explained in the preamble and the proposed rules themselves, for the first 24-month period. The commenter further recommended that the requirements for reinstatement after subsequent work reviews also should be consistent with the requirements of that phase of timely progress.

Response: We have revised the requirements for re-entering in-use status during the initial 24-month period in § 411.210(b)(1). We have not changed the requirements for re-entering in-use status after failing to meet the timely progress guidelines in the 24-month progress review or in the 12-month progress reviews because these requirements are consistent with the requirements of the reviews.

Section 411.220 What if I Am Temporarily Unable To Participate in My Employment Plan?

Comment: We received five comments about proposed § 411.220(a). All of these comments indicated that we should allow use of the ''inactive status'' (as defined in proposed §§ 411.192(b) and § 411.220(a)) not only in the initial 24-month period, but throughout the life of the ticket as long as the ticket is in use.

Response: To improve the organization of the rules in subpart C, the rules that were set out in proposed §§ 411.192 and 411.220 have been incorporated in § 411.190 in the final regulations. We did not adopt the suggestion to expand the scope of the rules to allow the placement of a ticket in inactive status after, as well as during, the initial 24-month period. While the placement of a ticket in inactive status is only permitted during the initial 24-month period in these final rules, the work requirements in subsequent progress review periods are designed to allow for intermittent employment (that is, three months of work out of 12, or six months of work out of 12) and to take into account relapses in health.

Comment: We received a comment regarding proposed § 411.220(b)(1) that indicated a belief that an individual would not be eligible to receive services from an EN or State VR agency if the individual chooses to place the ticket in inactive status. This commenter indicated that State VR agencies must continue to provide services to their clients under the terms of the IPE.

Response: Section 411.190 of these regulations indicates that the option of placing a ticket in inactive status is designed to accommodate individuals who temporarily are unable to participate or are not actively participating in their employment plan. This presumes that these individuals will not be receiving services under an IPE during this period of inactivity.

Comment: We received a comment suggesting that we modify proposed § 411.220(d) to include reassignment of the ticket as one of the options that the PM will offer a beneficiary who is not actively participating in his or her employment plan. This option would be in addition to the options of resuming active participation or placing the ticket in inactive status.

Response: We are not making this change because the rules in proposed § 411.220(d), which have been moved to § 411.190(a)(1) in the final regulations, concern the timely progress guidelines. In §§ 411.145 and 411.150 of the final rules, we explain that a beneficiary has the option of taking a ticket out of assignment and then reassigning the ticket. We will ensure that beneficiaries are advised of their options regarding ticket reassignment by providing public information materials, notices, operating instructions and procedures to the PM.

Section 411.225 What if My Ticket Is No Longer Assigned to an EN or State VR Agency?

Comment: We received two comments about this section (which is § 411.220 in the final regulations) which allows the individual an extension period of up to three months, during which the individual will be considered to be using a ticket even though the ticket is no longer assigned, to give the individual time to find another EN willing and able to serve the individual. One commenter expressed support for the provision and did not recommend any changes. The other commenter suggested adding a numbered paragraph to § 411.225(a) as follows: ''You have relocated to an area not served by your previous EN or State VR agency.''

Response: We agree with the suggested change to this section, with a modification. We are adding language to § 411.220(a)(1) of the final rules (formerly proposed § 411.225(a)(1)), instead of adding another numbered paragraph, to indicate that a beneficiary may have retrieved the ticket because the beneficiary relocated to an area not served by the beneficiary's previous EN or State VR agency.

Subpart D—Use of One or More Program Managers To Assist in Administration of the Ticket to Work Program

Section 411.230 What Is a PM?

Comments: The comments on proposed § 411.230 generally questioned the ability of a PM to administer a program as large and complex as the Ticket to Work program. One of the commenters expressed concern about the selection of a private organization as PM and recommended that the program be administered only by a designated State agency. The commenter indicated that there is a proven history of State administration of Federal programs to support their recommendation. Other issues included the PM's ability to provide sufficient access for beneficiaries with disabilities, to deal with the diversity issues of persons with disabilities, and to coordinate the program equitably nationwide.

Response: Section 1148(d)(1) of Public Law 106–170 specifically provides that PM(s) can be either private or public sector organizations. Therefore, the selection of the PM cannot be restricted to only State agencies as recommended in the comments. All organizations, both public and private, must be considered under the competitive bidding process as stated in § 411.230. The Commissioner may terminate a PM for inadequate performance. Public and private entities that serve as a PM for us will be held to the same level of accountability.

While the regulation provides general information about the PM's administration of the Ticket to Work program, specific details regarding program administration are provided in the PM contract. The contract contains a comprehensive business plan, a listing of specific tasks required of the PM, and a delivery schedule for completion of the required tasks. We believe that the questions raised about access and diversity are sufficiently addressed in the contract. For example, the Business Plan in the contract requires the PM to operate a toll-free Text Telephone Communication Service and provide Spanish language services. Further, the Business Plan designates the hours of service to be provided across the country and requires that inquiries be monitored on a State-by-State basis to ensure that the program is successfully implemented nationwide.

In September 2000, we contracted with MAXIMUS, Inc., to serve as the PM for the Ticket to Work program. Specific information about their duties and responsibilities as the PM can be obtained through their toll-free number at 1–866–968–7842, or TTY 1–866–833–2967.

Section 411.245 What Are the PM's Responsibilities Under the Ticket to Work Program?

Comment: The majority of comments on proposed subpart D of the regulation addressed the provisions of § 411.245. Several of the comments on proposed § 411.245(a) questioned the PM's ability to recruit sufficient numbers of ENs. Specifically, the commenters expressed concern about whether enough ENs would be recruited in all States and all areas to provide beneficiaries with EN choices. To address this issue, one commenter recommended that a formal referral process be created for the beneficiaries to refer service providers to the PM as potential ENs. Another commenter wanted the evaluation of the PM as described in proposed § 411.250 to specifically identify ''the recruitment of sufficient ENs'' as one of the assessment criteria.

Another comment addressed the issue of beneficiary options from a different perspective. The commenter recommended that the PM provide each EN with a list of ticket holders in their area that had not yet assigned their ticket. Each EN could then contact the beneficiaries and discuss with them services the EN could offer. Through this process, beneficiaries would be provided a variety of options from which to choose when assigning their ticket.

Response: As we indicated previously, the regulation provides general information regarding the responsibilities of the PM. The PM contract gives much greater detail about the PM's responsibilities, including the marketing activities that the PM will undertake.

While the contract does not specifically identify a referral program for beneficiaries as part of their recruitment efforts, it does require the PM to use a variety of resources in their recruitment efforts. Since neither the regulation nor the PM contract precludes the beneficiary as a source for potential EN referrals, we do not believe a formal referral process specifically for beneficiaries is needed in order for the PM to use this source when appropriate. We do not believe that it is necessary to identify ''recruitment of sufficient ENs'' as a separate assessment criterion in the regulation. The regulation provides assessment criteria such as quality of services and customer satisfaction. We believe that these criteria can be used in determining whether or not the PM recruited sufficient ENs to provide beneficiaries with choices in the assignment of their tickets. In addition to the assessment criteria listed in the regulations, the PM's contract identifies the enrollment of sufficient ENs as a performance standard required under the Government Performance and Results Act.

The process for the PM to provide ENs with information about beneficiaries eligible to receive tickets is

addressed in the Business Plan of the PM's contract. We will provide the PM with a list of all ticket-eligible beneficiaries by geographic area and disability impairment. The PM will provide, within the limitations of the Privacy Act, the ENs with information from this list for beneficiaries eligible to receive tickets in their area. The PM will encourage the ENs to use the lists to market their services with the beneficiaries.

Comment: Several comments on proposed § 411.245(b) addressed the issue of providing information in accessible formats. The language in the proposed regulation defined accessible format as ''media that is appropriate to a particular beneficiary's medical impairment(s)''. Other commenters were concerned that all information about the Ticket to Work program should be provided in an accessible format and that the beneficiary's preference should be taken into consideration. One commenter requested that ''medical'' be removed from the term ''medical impairment,'' in defining ''accessible format'' in paragraph (b)(2).

Response: The Business Plan of the PM contract identifies certain requirements that address accessibility issues. The PM is required to operate a toll-free Text Telephone Communication Service for people with hearing and speech impairments+ to provide service through their toll-free telephone number. In addition, the website operated by the PM will be fully accessible to visitors with disabilities via software-based assistive technologies such as screen readers, screen magnifiers, speech synthesizers, and voice input software that operate in conjunction with graphical desktop browsers. Informational materials will be made available to beneficiaries in Braille format upon request. We agree with the comment regarding the word ''medical,'' as not all impairments are ''medical'' in nature. We have changed the language in the final regulations to omit the word ''medical''.

Comment: Comments on proposed § 411.245(b) and (d) recommended adding time frames to the regulation. One was a fifteen-day time frame for the PM to respond to the beneficiaries about the reassignment of their tickets. The second was a ten-day time frame for the PM to respond to the EN about the assignment of a beneficiary's ticket. In both instances, the commenters were concerned about the delays that beneficiaries and ENs might experience if the PM did not respond timely.

Response: In both of the situations addressed in the comments, there is an assumption that services to the beneficiary cannot begin until a formal notice is received from the PM about the assignment or reassignment of a Ticket. This is not the case. The Business Plan of the PM contract outlines the process the PM will use for assigning or reassigning a ticket. When a beneficiary brings the Ticket to an EN, the EN will verify that the beneficiary has a ticket eligible for assignment. If the beneficiary and EN agree to work together, they develop an individual work plan. At this time, the beneficiary and the EN may begin working together. Therefore, there is no delay in service as anticipated by the comments. When the PM receives the plan signed by both the beneficiary and EN, the PM will verify that the ticket is eligible for assignment, update the database to show the ticket has been assigned, and notify the appropriate parties.

Comment: Comments on proposed § 411.245(c)(2) and § 411.245(d) requested that additional language be included to clarify the PM's involvement in certain dispute resolution situations. Commenters wanted both sections to identify the PM's responsibility to resolve payment disputes between two or more ENs when a ticket is re-assigned and multiple ENs have provided services to the same beneficiary.

Response: We agree and we are revising § 411.245(c)(2) to clarify that the PM will be responsible for making determinations regarding the allocation of outcome or milestone payments when the beneficiary has been served by more than one EN. We believe that the changes to § 411.245(c)(2) address the commenter's concerns and additional changes in § 411.245(d) are not needed.

Comment: We received several comments on proposed § 411.245(d) from State VR agencies regarding the PM's review of individual work plans and individualized plans for employment. The commenters wanted the regulation to clarify that the PM could review only individual work plans and not individualized plans for employment. They stressed that the PM had no authority to review an individualized plan for employment submitted by a State VR agency serving as an EN. The comments cited 34 CFR 361.45 and 361.46 as the only authority for the content and the development of individualized plans for employment.

Response: Section 411.245(d) of the regulation does not require the PM to review individualized plans for employment or amendments to those plans. We have revised this section, as recommended, to state that the PM will not review individualized plans for employment developed by beneficiaries and State VR agencies. Section 411.385 of the regulation describes how an individualized plan for employment is used in the Ticket to Work program. Section 411.385 does not require these plans to be submitted to the PM in connection with the assignment of a ticket to a State VR agency, and we did not intend for the PM to review individualized plans for employment.

Comment: Several comments on proposed § 411.245(d) discussed the PM's oversight of referrals between the ENs and the State VR agencies. Commenters requested additional language that would clarify the PM's responsibility when an EN that chooses not to take a beneficiary's ticket makes a referral to a State VR agency. The commenters wanted the regulation to reflect the PM's lack of jurisdiction regarding such referrals.

Response: While a referral to the State VR agency in this situation is possible, the referral would be outside the parameters of the Ticket to Work program and the PM's authority. So, we do not believe that we need to clarify the PM's lack of authority to oversee such referrals.

Section 411.250 How Will SSA Evaluate a PM?

Comment: We received many comments about the evaluation process for the PM. The commenters wanted to ensure that evaluation included input from a variety of stakeholders. Several commenters recommended that we solicit input from ENs and beneficiaries as part of the evaluation process for the PM. In addition, one commenter urged that we submit the evaluation to the Ticket to Work and Work Incentives Advisory Panel for comment and recommendations.

Response: The evaluation will gather input from parties served by the PM including beneficiaries and ENs. We agree that such input is a valuable resource. We also agree that it is appropriate for the Ticket to Work and Work Incentives Advisory Panel to receive and review a copy of the evaluation. However, we do not believe that these regulations need to address this issue as the evaluation process is outlined in detail in the PM's contract.

Comment: Other comments on proposed § 411.250 were directed at specific elements of the evaluation process. One commenter requested that the regulation specify that an evaluation would be performed at least annually. Another commenter wanted to know about the qualifications of the Project Officer and the Contracting Officer to review a contract for disability-related programs.

Response: We believe that these elements of the evaluation process should not be addressed in this regulation as they are already described in other Federal regulations including the Federal Acquisition Regulations (FAR) at 48 CFR Chapter 1. The procedures regarding the review of the PM's performance are spelled out in the FAR at 48 CFR subpart 42.15. Qualifications for project officers and contracting officers are established in the FAR at 48 CFR 1.102–4 and 1.602–1. In addition, the Project Officer is on staff at SSA's Office of Employment Support Program and is knowledgeable about programs serving persons with disabilities.

Subpart E—Employment Networks

Section 411.300 What is an EN?

Comment: Some commenters suggested that the definition of an EN should be included in its entirety in the ''Definitions'' section of the final rule. They indicated this definition should include a complete list of the services that the ENs are responsible for providing or arranging and noted that we should include the scope of services that may be needed to enable an individual with a disability to prepare for work. Some other commenters indicated that ENs should be required to provide a minimum range of services and that we should specify what is meant by ''substantial expertise and experience'' as contained in section 1148(f)(1)(C) of the Act.

Response: We have defined employment network, or EN, at § 411.115(e). We are not providing a more complete listing of services because such a listing would not encompass all the services or other assistance a beneficiary might need. Instead we are specifying only employment services, vocational rehabilitation services or other support services to provide flexibility to ENs and thus not specifically include or exclude some services. Section 411.245(b)(3) contains examples of the services an EN may provide. The types of services an EN will provide in a specific case will be detailed in the work plan an EN will sign with a beneficiary. SSA does not want to limit or describe what specific services should be included in this plan. The phrase ''substantial expertise and experience'' is found in section 1148(f)(1)(C) of the Act, which states that no EN ''may serve under the Program unless it meets and maintains compliance with both general selection criteria (such as professional and educational qualifications, where applicable) and specific selection criteria (such as substantial expertise and experience in providing relevant employment services and supports).'' We have not further defined that phrase in the regulations. The general and specific selection criteria for ENs are contained in § 411.315 of the final rules.

Section 411.305 Who Is Eligible To Be an EN?

Comment: Many commenters recommended that family or friends who wish to serve an individual be considered eligible to be an EN. Some commenters also suggested that we permit a beneficiary to be his or her own EN.

Response: The law provides that any entity willing to assume responsibility for the coordination and delivery of services under the Ticket to Work program may qualify as an EN. Our regulation states that any qualified entity willing to assume responsibility for the coordination and delivery of employment services, VR services, or other support services to beneficiaries who have assigned their tickets to an EN are eligible to be ENs. This does not rule out family or friends who meet the qualifications to be an EN and are willing to assume this responsibility. We therefore do not see any need to specifically cite family or friends. However, the statute does not allow a beneficiary to serve as his or her own EN. As § 1148(b)(3) of the Social Security Act and § 411.120 explain, a ticket under the Ticket to Work program is a document which provides evidence of the Commissioner's agreement to pay an EN or State VR agency for providing services to a beneficiary.

Comment: Some commenters questioned why State VR and one-stop delivery systems should be automatic ENs. Another commenter requested inclusion of the Department of Veterans Affairs as an EN. Another commenter wanted to know whether an employer could become an EN.

Response: Section 1148(f)(1) of the Act states that an EN may be an agency or instrumentality of a State (or political subdivision thereof) or a private entity. It does not allow Federal agencies to serve as ENs. Section 1148(c) of the Act allows each State VR agency to elect to participate in the Ticket to Work program as an EN with respect to a disabled individual. While the law specifically cites one-stop delivery systems as eligible to become ENs, it does not make them ENs automatically. Section 411.305(g) lists employers as eligible to be ENs.

Comment: One commenter wanted to know whether American Indian Projects may become ENs and whether such projects can become ENs if their State has not been chosen as a site.

Response: Section 411.305(e) lists organizations administering VR Services Projects for American Indians with Disabilities authorized under section 121 of part C of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), as one of the entities eligible to be ENs. American Indian Projects under section 121 can apply to be ENs only within the States where the Ticket to Work program has been implemented, or if they are qualified to provide services within such a State.

Section 411.310 How Does an Entity Apply To Be an EN and Who Will Determine Whether an Entity Qualifies as an EN?

Comment: Some commenters wanted to know how an entity applies to be an EN, who will determine whether an entity qualifies, and requested that our final rule reflect the differences in application between State VR agencies and other entities.

Response: Section 411.310 explains that an entity applies to be an EN by responding to our Request for Proposal (RFP), that the PM will conduct a preliminary review of responses to the RFP, and that the Commissioner will decide which applicants will be approved to serve as ENs. Sections 411.360 and 411.365 explain that we will notify the State VR agency in writing about the payment systems available under the Ticket to Work program, and that the State agency must respond in writing. We have revised § 411.310 to clarify that this section applies to entities other than State VR agencies which are applying to be ENs.

Comment: One commenter suggested that since the PM is charged with the responsibility to ensure that there are a sufficient number of ENs nationally, the PM should be charged with the responsibility to evaluate the qualifications because they are more qualified. The commenter also stated that the PM, not the Commissioner, should decide which applicants to select as ENs.

Response: The PM will play a strong role in evaluating applicants' qualifications and in recommending applicants for selection as ENs. SSA will consider the PM's evaluations and recommendations. However, since SSA will be entering into agreements with ENs, will be making payments to ENs, and ultimately will be responsible for the success of the Ticket to Work program, SSA must remain the final authority for evaluating EN

qualifications and determining which applicants will become ENs.

Comment: Several commenters suggested that we change § 411.310 to indicate that it applies to entities other than State VR agencies and that State VR agencies must comply with § 411.360 which discusses how a State VR agency becomes an EN.

Response: We have modified § 411.310 to indicate that it applies to entities other than State VR agencies and added a part (c) to explain that § 411.360 describes how State VR agencies participate as ENs in the Ticket to Work program.

Section 411.315 What Are the Minimum Qualifications Necessary To Be an EN?

Comment: One commenter suggested switching the order of some of the qualifications listed in § 411.315(a) and deleting the example in § 411.315 of using staff with a college degree in a related field.

Response: The order of qualifications listed in § 411.315(a) does not imply that the first one listed is of more importance than subsequent qualifications. Items (1) through (6) in this listing are of equal weight and there is no rationale for rearranging the listing. The use of staff with degrees in a related field as a qualification for ENs ensures that we do not unduly restrict qualified entities from becoming ENs and thus limit the options of our beneficiaries seeking services, because it provides another way for an entity to demonstrate that it meets one of the qualifications to serve as an EN.

Comment: Several commenters believed that our requirements for ENs should require all ENs to be licensed, certified, accredited or registered to provide services or to be able to arrange for other qualified entities to provide these services. Other commenters felt that our requirements were too stringent and that we should delete entirely § 411.315(c), which requires that potential ENs have applicable licenses, or certificates if required by State law.

Response: We have tried to strike a balance between ensuring that ENs are qualified by licensing or certification, while also providing an opportunity for non-traditional providers to qualify as ENs by demonstrating that they have obtained education or experience in providing the relevant services. Section 1148(f) of the Act provides that ENs must meet general selection criteria such as professional and educational qualifications where applicable and specific selection criteria such as substantial expertise and experience in providing relevant employment services and supports. Section 1148(f) did not limit us to requiring that all ENs be licensed, certified, or accredited, or registered to provide services or to arrange for other qualified entities to provide these services. However, where State law requires such documentation, the requirements of State law will apply.

Comment: Many commenters noted that the proposed rules appeared to require that ENs have relevant certification, accreditation, or license, even when the EN is not directly involved in the provision of services. They specifically expressed concern that we were requiring ENs to be qualified to provide medical and health-related services. Commenters suggested that our final rule clarify that an EN would not need certification, accreditation, or licensing unless it was directly providing the relevant services, but that the EN must be able to arrange for an entity with the applicable certification, accreditation, or license to provide the services.

Response: Section 411.315 of the proposed rules did not require certification, licensing or registration per se. Section 411.315(b) of the rules requires ENs to have qualified staff. One way to meet this requirement is by using staff that are properly credentialed. Section 411.315(c) of the rules requires ENs to comply with whatever State laws may apply to them; ENs are not relieved of their obligation to comply with State law simply by virtue of participating in the Ticket to Work program. Based on the comments, we revised § 411.315(b)(2) to clarify that if any medical and related health services are provided, the EN should take reasonable steps to assure that such services are provided under the formal supervision of persons licensed to prescribe or supervise the provision of such services. We did not intend to give the impression in the proposed rules that all ENs must be licensed to provide medical services.

Comment: A few commenters noted that required certificates and licenses would vary on a State-to-State basis and asked what measures would be taken to address the quality assurance of State requirements.

Response: SSA has no authority or interest in determining the validity of State licensing requirements or to encroach on State laws regarding these requirements. Section 411.315(c) states that potential ENs must comply with other laws that they may be subject to in order to provide employment services, vocational rehabilitation services, and other support services. Their potential participation in the Ticket to Work program does not eliminate their duty to comply with other State laws that may govern their activities.

Comment: One commenter suggested that our qualifications for ENs should include alternative demonstrations of competency and allow for special circumstances under which an individual can choose as their provider an entity with no demonstrated qualifications or experience subject to individual approval and periodic review of progress by the PM. Some commenters indicated that to meet the goal of expanding the universe of service providers, we should include those family members, friends, or other persons who have the greatest personal investment in the individual's self-sufficiency including formally established circles of support or incorporated trust/guardianship boards and to allow for our experience requirement to include experience in life planning and community support.

Response: Section 1148(f)(1) of the Act requires that ENs meet and maintain compliance with both general selection criteria (such as professional and educational qualifications) and specific selection criteria (such as substantial expertise and experience in providing relevant employment services and supports). The Act thus requires some level of education, experience, or expertise in providing employment related services and does not permit us to use, as an EN, providers with no demonstrated qualifications or experience in providing or arranging for these types of services. Friends, family members, or other persons must meet these requirements to qualify as ENs.

Comment: Several commenters questioned whether our requirement of applicable licenses, if such licenses are required by State law, would prevent entities specializing in certain impairments, such as deafness or blindness, from qualifying as ENs. Other commenters suggested our licensing requirement is too restrictive and will prevent organizations with national licenses or certifications from qualifying as ENs. Still other commenters indicated that § 411.315(a)(3) should be modified to include nondiscrimination on the basis of disability as a requirement to be an EN.

Response: We do not believe the requirement in § 411.315(c) that ENs follow State law will prevent ENs from specializing in certain impairments. Section 411.315(c) merely provides that ENs must follow the State laws that are applicable to them. SSA has no authority to encroach on State laws in instances where licenses, certification,

or accreditation are required to provide specific services, including licenses to serve deaf or hard of hearing individuals. We do not believe the requirement in § 411.315(c) will prevent organizations with national licenses or certificates from qualifying as ENs. Presumably, these organizations are already complying with State laws applicable to them. We are not adopting the comment to modify § 411.315(a)(3) to require nondiscrimination on the basis of disability. The RFP for ENs requires applicants to indicate the impairment categories they serve and demonstrate that they have experience and expertise in serving people within those impairment categories. We envision that ENs will serve individuals in different impairment categories and have expertise and experience in serving specific groups.

Comment: Some commenters believed the proposed rule placed a higher value on education than on experience. Other commenters questioned what constitutes ''substantial expertise and experience.''

Response: The rules do not place a higher value on education than on experience. Our requirements to qualify as an EN are found at § 411.315. They include general criteria such as systems requirements, being accessible, and having adequate resources to perform the required activities, among other items. They also include specific criteria. The phrase ''substantial expertise and experience'' is used in section 1148(f)(1)(C) of the Act as an example of what may be used as specific selection criteria to be an EN. With respect to the specific selection criteria we use in § 411.315(b), we require ENs to have qualified staff. Potential ENs may show they have qualified staff by demonstrating that their staff are certified, licensed or meet certain standards. Potential ENs may also show they have qualified staff by demonstrating that their staff have education or experience to provide the services that the EN wants to provide to beneficiaries.

Comment: One commenter suggested that we require all ENs to develop an expertise in small business development and self-employment assistance services. The commenter stated that access to competent and available self-employment and small business development services are critical to successful employment outcomes.

Response: Expertise in small business development and self-employment assistance could be a valuable tool for ENs in providing services to beneficiaries. However, we do not believe we should require all ENs to have this expertise. We intend these rules to encourage a variety of entities with different skills and expertise to become ENs, and do not want to limit a beneficiary's range of choices by requiring that all ENs possess a specific expertise.

Comment: One commenter suggested that SSA implement a vigorous review process for any entity that wishes to become an EN to assure that each approved EN is adequately staffed by educated and certified professionals who are experienced in the areas of rehabilitation and disability. Other commenters indicated that we failed in the proposed rules to require specific qualifications for EN staff that would ensure a high level of knowledge in serving many disabilities.

Response: The RFP for ENs requires that entities submit documentation of their qualifications to serve as ENs. SSA will not enter into agreements with entities that do not meet this requirement. Further, § 411.315 provides criteria that an entity must meet to qualify as an EN. The staffing requirements outlined in this section should ensure that ENs have staff with a high level of knowledge to serve our beneficiaries. An EN is not required to serve all disability categories but can specialize. The RFP asks applicants to indicate the impairment categories they serve and demonstrate their qualifications to serve people within those impairment categories.

Comment: Some commenters stated that we should specify the range of services ENs must provide.

Response: We want to encourage as many qualified entities as possible to serve as ENs. We do not believe we should require all ENs to provide the same set of particular services, as beneficiaries may find a wide variety of services helpful in their return to work efforts. In addition, some ENs may not necessarily provide certain services, but only coordinate the delivery of services.

Comment: One commenter requested we permit providers who qualified as alternate participants under our reimbursement program to be automatically eligible as ENs. The commenter also suggested that other entities which already contract with State VR agencies should readily qualify as ENs.

Response: With respect to alternate participants, in any State where the Ticket to Work program is implemented, each alternate participant whose service area is in that State will be asked if it wants to participate in the program as an EN. See section 1148(d)(4)(B) of the Social Security Act and § 411.705 of these final rules. With respect to entities that have contracts with State VR agencies, section 1148(f)(1) of the Act requires that all entities must meet and maintain compliance with both general and specific selection criteria. Entities which have already contracted with State VR agencies are required to submit proposals in response to our RFP and indicate that they will comply with all requirements of the Ticket to Work program.

Comment: One commenter recommended that we presumptively deem one-stop delivery systems established under title I of the Workforce Investment Act of 1998 as meeting the qualifications to be an EN. Another commenter asked whether an independent living center might qualify as an EN. Another asked what policies would be put in place for people such as artists whose work does not fall into a category represented by an EN. This commenter expressed a concern that SSA did not see the arts as a valid career choice.

Response: Section 1148(f) of the Act does not permit us to presumptively deem any entity as qualified as an EN, although State VR agencies and alternate participants are the only entities that do not have to follow the standard application process to become an EN. All other potential ENs must respond to the RFP for ENs and indicate that they understand and meet the requirements to serve as ENs. An independent living center may qualify as an EN if it meets the requirements spelled out in these regulations and in the RFP for ENs. Our regulation does not state what is appropriate work or prohibit potential ENs from specializing in certain career fields*Comment:* Section 411.315(a)(2) of the proposed rules states that the general criteria for EN qualification include ''being accessible, both physically and programmatically, to beneficiaries seeking or receiving services.'' Some commenters suggested that we need to define ''programmatic accessibility.''

Response: We agree and have revised § 411.315(a)(2) in the final rules to include some examples of what it means to be programmatically accessible.

Section 411.320 What Are an EN's Responsibilities as a Participant in the Ticket to Work Program?

Comment: One commenter recommended that we establish clear standards for ENs to use in providing information to ticket holders regarding the services provided and expected outcomes.

Response: ENs are required to provide information sufficient for beneficiaries to make an informed choice regarding

services and vocational goals and to then agree to and sign an IWP regarding these services and the vocational goal. Section 1148(f)(4) of the Act requires that ENs prepare periodic reports on at least an annual basis itemizing outcomes achieved with respect to services provided by the EN. Each EN must provide a copy of its latest report to each beneficiary that it agrees to work with under the Ticket to Work program. The PM is required to ensure that these reports are available to the public.

Comment: One commenter indicated that this section should specify who prescribes an EN's service area.

Response: When responding to the RFP for ENs, an applicant indicates the geographic area(s) in which it proposes to provide services to beneficiaries.

Comment: Several commenters indicated that we should reflect the State VR agency's obligation to follow the law as outlined in the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*),

Response: Section 411.375 in subpart F states that ''The State VR agency must continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), even when functioning as an EN.'' Section 411.385 indicates that the State VR agencies are required to follow the law as outlined in the Rehabilitation Act which requires the use of an individualized plan for employment (IPE).

Comment: Several commenters stated that we should use the term ''individualized plan for employment'' as well as IWP.

Response: Sections 411.115(f), (i), and (j) explain that *employment plan* means an individual work plan under which an EN (other than a State VR agency) provides services to a disabled beneficiary under the Ticket to Work program or an individualized plan for employment under which a State VR agency provides services. We use IWP to identify the employment plan developed and implemented by an EN and beneficiary, and IPE to describe the employment plan agreed to and signed by a State VR agency and beneficiary.

Comment: Several commenters stated that we should require ENs to serve any client living in the geographic area they indicate they serve. The commenters indicated that allowing ENs to choose would prevent those with the most severe disabilities from getting any services and ENs would take only the easiest clients.

Response: The Ticket to Work program provides for a voluntary relationship between the beneficiary and the EN. While an EN may not discriminate in the provision of services based on a beneficiary's age, gender, race, color, creed, or national origin, an EN may select the beneficiaries to whom it will offer services based on factors such as its assessment of the needs of the beneficiary and of its ability to help the individual. Requiring the EN to serve all clients in their geographic area would eliminate the voluntary nature of this relationship and reduce the number of entities who would choose to serve beneficiaries as ENs.

Whether there are under-served populations will be assessed as part of the ongoing evaluations of the Ticket to Work program. Section 101(d)(4) of Public Law 106–170 requires the Commissioner of Social Security to provide for independent evaluations to assess the effectiveness of the Ticket to Work program, including evaluation of ''the characteristics of individuals in possession of tickets under the Program who are not accepted for services and, to the extent reasonably determinable, the reasons for which such beneficiaries were not accepted for services.'' The Commissioner is required to provide periodic reports to the Congress on these evaluations, setting forth the Commissioner's evaluation ''of the extent to which the Program has been successful and the Commissioner's conclusions on whether or how the Program should be modified.'' Section 1148(h)(5)(C) of the Social Security Act also requires the Commissioner to report to Congress no later than 36 months after the date of the enactment of Public Law 106–170 with recommendations for a method or methods to adjust EN payment rates that would ensure adequate incentives for the provision of services by ENs of:

- Individuals with a need for ongoing support and services;
- Individuals with a need for high-cost accommodations;
- Individuals who earn a subminimum wage; and
- Individuals who work and receive partial cash benefits.

Based on these evaluations, the Commissioner may recommend modifications of the program to the Congress, or make other necessary changes within the Commissioner's authority under the Social Security Act.

Comment: One commenter expressed concern about what would happen to a beneficiary who refused to work with an EN and faced the possibility of sanctions.

Response: Section 101(b) of Public Law 106–170 repealed sections 222(b) and 1615(c) of the Act, which provided for the sanctions for VR refusal.

Comment: Some commenters stated that the requirements in the NPRM will restrict many private businesses from becoming ENs and do not offer any incentives to an employer to participate or even become an EN.

Response: The requirements in the NPRM are intended to strike a balance between assuring the participation of qualified ENs including non-traditional providers while protecting beneficiaries by requiring a certain level of competence by the entities that will serve them. The incentives provided in section 1148 of the Act for the ENs are the milestone and outcome payments for achieving results. While no special incentives are provided in this legislation for employers, we are confident that employers are qualified to serve as ENs, and that they will be able to assist beneficiaries to obtain and maintain employment.

Section 411.321 Under What Conditions Will SSA Terminate an Agreement With an EN Due to Inadequate Performance?

Comment: One commenter recommended that we delete the phrase ''self-supporting employment and leaving the benefit rolls'' as the goals of our performance standards for ENs.

Response: Enabling beneficiaries to achieve self-supporting employment and leave the benefit rolls is the goal of the Ticket to Work program. It is a critical performance standard for ENs and essential to our evaluation of ENs.

Comment: One commenter expressed concern about the standards SSA will use to evaluate ENs and whether we will have different standards for rehabilitation agencies and for ENs.

Response: We will develop appropriate standards to ensure the capability of ENs to provide the needed services and to achieve outcomes. For State VR agency performance, SSA will defer to the standards required by the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*). As indicated in section 411.375, the State VR agency must continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), even while functioning as an EN.

Section 411.325 What Reporting Requirements Are Placed on an EN as a Participant in the Ticket to Work Program?

Comment: Several commenters objected to having to provide a financial report showing the percentage of the EN's budget that was spent on serving beneficiaries with tickets including the

amount of time that was spent on beneficiaries who return to work and those who do not return to work. They indicated that this percentage reporting would be an extensive process and would require reporting on time spent working with an individual for which they would not be compensated. Other commenters felt that the reporting of ticket acceptance and of the IWP is unnecessary and represents too much reporting on process as opposed to reporting on beneficiary outcomes. Another commenter asked for a definition of outcomes to be reported. One commenter suggested that we include a requirement that the State VR agency submit an IPE to the PM in § 411.325(b) and (c).

Response: We agree with the commenters that the reporting requirement regarding percentage of time working with beneficiaries would place an undue burden on ENs and are eliminating this specific requirement in our final rule. However, we are required to obtain information regarding ticket acceptance and the IWP to ensure that beneficiaries are using their tickets and thus are eligible for continuing disability review protection, and to determine EN eligibility for payments under the EN payment systems. We will develop a national report model, which will define outcomes. We will use the information we receive from EN reports to identify changes we must make to the Ticket to Work program in the future. We did not require, in § 411.325 or elsewhere, the State VR agency to send a copy of the IPE to the PM, because of concerns expressed by the Rehabilitation Services Administration and other commenters about the privacy and confidentiality of client information required by the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*).

Comment: One commenter recommended that we add language to § 411.325(h) indicating that the EN will collect and record such data as we shall require by written contractual agreement.

Response: The requirement to collect and record such data as we shall require will be in our written agreements with ENs. There is no need to specify ''by contractual agreement'' in § 411.325.

Section 411.330 How Will SSA Evaluate an EN's Performance?

Comment: Some commenters requested information regarding the specific performance standards SSA will develop to evaluate ENs and from whom SSA will obtain input for such evaluations. Another commenter asked whether this evaluation should be the responsibility of the PM.

Response: SSA will develop appropriate performance standards and will consider input from providers, beneficiaries, and other interested parties in developing these standards. The PM will assist SSA in evaluating EN performance. However, SSA is responsible for the final evaluation because SSA has entered into contractual agreements with ENs and bears the ultimate responsibility for EN performance and the Ticket to Work program's success.

Subpart F—State Vocational Rehabilitation Agencies' Participation

General Comments and Responses

Comment: Several commenters stated that the State VR agency and the EN are the same entity in instances in which the VR agency participates as an EN. These commenters requested that, throughout the final regulations, whenever reference is made to an EN, such reference indicate that an EN includes a State VR agency functioning as an EN.

Response: We did not adopt the commenters' recommendation. Some rules in these final regulations, such as most of the rules in subparts E and G, apply to entities, other than State VR agencies, which have entered into agreement with SSA (or wish to do so) to serve as ENs under the Ticket to Work program. Where necessary, various sections of the final rules include references to both an EN and a State VR agency to specify the scope of a particular rule or rules. For the rules in subpart H which describe the two EN payment systems, references to an EN generally are intended to encompass a State VR agency functioning as an EN, unless the context requires otherwise or there is a specific mention of the State VR agency.

Section 411.350 Must a State VR Agency Participate in the Ticket to Work Program?

Comment: Several commenters requested that we modify § 411.350, ''Must a State VR agency participate in the Ticket to Work program?'' They indicated that as written this section indicates that a VR agency must participate as an EN in order to receive payment for services. They indicated that sections 222(d) and 1615(d) and (e) of the Social Security Act do not require VR agencies to become ENs.

Response: Section 411.350 has been clarified as follows: ''Each State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), must participate in the Ticket to Work program if it wishes to receive payments from SSA for serving disabled beneficiaries who are issued a ticket.'' Section 411.370, Does a State VR agency ever have to function as an EN?, states that: ''A State VR agency does not have to function as an EN when serving a beneficiary with a ticket if the ticket has not previously been assigned to an EN or State VR agency or if it has been previously assigned, we have not made payment under an EN payment system with respect to that ticket.'' (See § 411.355(a).) Conversely, a State VR agency does have to function as an EN when it elects one of the EN payment systems for a beneficiary, on a case-by-case basis. (See § 411.355(b).) However, as described in § 411.585(b), a State VR agency is precluded from being paid under the cost reimbursement payment system if an EN or a State VR agency serving a beneficiary as an EN has been paid by SSA under one of the EN payment systems with respect to the same ticket. However, even if the State VR agency is not serving as an EN, it still must tell the PM whenever a beneficiary with a ticket is accepted for services.

Section 411.355 What Payment Options Does a State VR Agency Have Under the Ticket to Work Program?

Comment: One commenter stated that it does not make sense to allow the State VR agencies to determine on a case-by-case basis how they will be paid for serving a beneficiary, because that could encourage VR agencies to seek out the easiest beneficiaries to serve and get them to employment. The commenter noted that this is the opposite of the State VR agencies' traditional mandate, which is to give priority to serving the most severely disabled.

Response: We are not adopting this comment. The Ticket to Work program does not in any way affect the State VR agency's traditional mandate to serve the most severely disabled. It merely provides the State VR agency with an additional payment option in serving beneficiaries with disabilities who are issued a ticket and who seek services from the State VR agency rather than from an EN serving under the program.

Comment: One commenter asked if there would be any changes to the present process for State VR agencies seeking cost reimbursement payments.

Response: Under § 411.585(a) of the final rule, if a State VR agency is paid by SSA under the cost reimbursement payment system with respect to a ticket,

such payment precludes any subsequent payment by SSA under one of the EN payment systems based on the same ticket. Under § 411.585(b) of the final rules, if an EN or a State VR agency serving a beneficiary as an EN is paid by SSA under one of the EN payment systems with respect to a ticket, such payment precludes subsequent payment to a State VR agency under the cost reimbursement payment system based on the same ticket. Public Law 106–170 repealed sections 222(b) and 1615(c) of the Act, effective January 1, 2001. Therefore, sanctions for refusing VR services without good cause are eliminated. Because the sanctions are eliminated, cases in which such sanctions are imposed are eliminated and no longer one of the categories of cases for which State VR agencies can seek reimbursement. As noted in the preamble, SSA intends to publish proposed rules in the **Federal Register** at a later date to amend the affected regulations to reflect the change in the law.

Comment: One commenter stated that these regulations should state that the VR reimbursement system continues to operate as a program available to all beneficiaries with disabilities who are eligible for VR services. In the commenter's view, as these regulations read now, reimbursement seems to apply only to ticket holders. State VR agencies have and will continue to serve many beneficiaries who will not receive tickets.

Response: We are not adopting this comment. Section 411.355(c) states that: ''When serving a beneficiary who was not issued a ticket, the State VR agency may seek payment only under the cost reimbursement payment system.''

Section 411.365 How Does a State VR Agency Notify SSA About Its Choice of a Payment System for Use When Functioning as an EN?

Comment: Several commenters stated that § 411.365(a) should be revised to reflect that the State Agency must respond in writing only if it intends to function as an EN to make it clear that a State VR agency does not have to function as an EN.

Response: We are not adopting this recommendation. Under § 411.585(b) of the final rules, if an EN or a State VR agency serving a beneficiary as an EN is paid by us under one of the EN payment systems with respect to a ticket, such payment precludes subsequent payment to a State VR agency under the cost reimbursement payment system based on the same ticket. The only payment system available to a State VR agency under this rule would be the EN payment system elected in response to the letter identified in § 411.365(a).

Comment: Some commenters stated that § 411.365(b) should be revised to allow for the appropriate administrative authority other than the Governor to sign the letter reflecting the State VR agency's preferred payment method when functioning as a EN.

Response: We agree, and have revised § 411.365(b) in the final rules to indicate that ''[t]he director of the State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720, *et seq.*) or the director's designee must sign the State VR agency's letter.''

Section 411.370 Does a State VR Agency Ever Have To Function as an EN?

Comment: Several commenters noted that proposed § 411.370 provides that ''even if the State VR agency is not serving as an EN, it still must tell the program manager whenever a beneficiary with a ticket is accepted for services to ensure that the beneficiary's ticket is assigned to that agency.'' The commenters stated that this provision would appear to indicate that all a VR agency needs to do to have a ticket assigned to it is to tell the PM that they are working with the individual. They noted that § 411.370 seems to be contradicted by § 411.385, which states that the State VR agencies must have beneficiaries sign a form when they wish to assign their Ticket to Work to a VR agency.

Response: Proposed sections 411.370 and 411.385 are not in conflict. In the final rules, however, we have made changes to clarify § 411.370. Section 411.370 explains that State VR agencies may choose on a case-by-case basis to function as an EN when serving a beneficiary with a ticket, or they may serve beneficiaries under the cost reimbursement system, subject to the limitations described in § 411.585. In either situation, State VR agencies must tell the PM that a beneficiary has been accepted for services in order for the ticket to be assigned to that agency. If a beneficiary with a ticket decides to seek services from the State VR agency, then the beneficiary will in effect be using the ticket for those services, even if the State VR agency chooses to be reimbursed rather than being paid under one of the EN payment systems. The process that the State VR agency will use to inform the PM is provided in § 411.385(a) and (b).

Section 411.385 What Does a State VR Agency Do if a Beneficiary Who Is Eligible for VR Services Has a Ticket That Is Available for Assignment?

Comment: Several commenters noted that, under proposed § 411.385, when a beneficiary signs an Individualized Plan for Employment (IPE) as defined under the Rehabilitation Act, the beneficiary automatically has assigned the ticket to the State VR agency, regardless of whether the VR agency elects to participate as an EN with respect to the beneficiary. These commenters believe that § 411.385 negates beneficiary choice, which, as they state, is the hallmark of the Ticket to Work program. They noted that disability beneficiaries are presumptively eligible for State VR services without the ticket. They further indicated that if the State VR agency receives payment under the cost reimbursement payment system, § 411.585 provides that we cannot make payment to an EN. They argued that this would deny beneficiaries the use of their tickets at a later time.

Response: The Ticket to Work program increases beneficiary choice by expanding the options available for disability beneficiaries to access employment services, vocational rehabilitation services, and other support services that are necessary for them to find and retain employment and reduce dependency on cash benefit programs. Beneficiaries can choose to receive services from either the State VR agency or other service providers approved to participate as ENs. Beneficiaries with a ticket that can be assigned who decide to work with an EN other than a State VR agency will agree to and sign an individual work plan. Similarly, beneficiaries with a ticket that can be assigned who decide to work with the State VR agency will agree to and sign an IPE required under the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*). In both circumstances, the beneficiaries have decided to participate in the Ticket to Work program by working with a provider to receive services necessary to help them go to work. Further, beneficiaries who are not satisfied with the services they receive from their chosen providers are able to reassign their ticket if they meet the requirements of § 411.150. See the comment and response section of subpart H for a discussion of the conditions that must be met to allow a State VR agency and EN to both receive payment for serving a beneficiary based on the same ticket.

Comment: Two commenters requested that § 411.385(a) be rewritten to clarify

that the individual must be determined eligible prior to developing an IPE and that both the individual and the VR counselor must sign the IPE.

Response: Section 411.385(a) has been revised to indicate that once the State VR agency determines that a beneficiary is eligible for VR services, the beneficiary and a representative of the State VR agency must agree to and sign the IPE, and that the requirements of § 411.140(d) or § 411.150(a) and (b) also must be met.

Comment: Several commenters recommended that we delete the phrase ''working with the beneficiary'' from § 411.385(b) because it is overly specific and limits who can sign the information being provided to the PM by the State VR agency.

Response: We agree and are revising § 411.385(b) to delete ''working with the beneficiary.''

Section 411.390 What Does a State VR Agency Do if a Beneficiary to Whom it Is Already Providing Services Has a Ticket That Is Available for Assignment?

Comment: Several commenters identified a conflict between proposed §§ 411.390 and 411.510(c) regarding a State VR agency's payment election options with respect to a beneficiary already receiving VR services under an IPE before the beneficiary receives a ticket and assigns it to the State VR agency.

Response: We are revising § 411.390 to remove the provision that conflicted with § 411.510(c). Section 411.510(c) of the final rules provides that for each beneficiary who already is a client of the State VR agency prior to receiving a ticket, the State VR agency will notify the PM of its payment system election at the time the beneficiary decides to assign the ticket to it.

Comment: Some commenters stated that proposed § 411.390 should be revised to provide that the State VR agency should automatically be considered as the holder of the ticket for current clients unless and until the beneficiary opts to change providers.

Response: We are not adopting this comment. Beneficiaries who are receiving services from the State VR agency under an existing IPE when they receive their ticket should have the opportunity to make an informed choice regarding their participation in the Ticket to Work program. Beneficiaries will be able to decide whether or not they wish to assign their ticket to the State VR agency. This includes beneficiaries who are determined eligible for a ticket upon implementation of the Ticket to Work program in a State and beneficiaries who are determined ineligible for a ticket when the Ticket to Work program is implemented in a State but later become eligible for a ticket.

Section 411.395 Is a State VR Agency Required To Provide Periodic Reports?

Comments: One commenter stated that § 411.395 should prescribe how periodic reports on outcomes should be transmitted, and that an electronic infrastructure should be in place and operational prior to implementation of the Ticket to Work program.

Response: We are not adopting this recommendation to regulate the process for transmitting reports between a State VR agency and the PM. The PM will contact each State VR agency in States where the Ticket to Work program has been implemented to address the process for collecting information.

Comment: Several commenters stated that SSA should accept reports submitted by State VR agencies to the Rehabilitation Services Administration rather than creating additional reporting requirements for these agencies. Their concern is that reporting will be excessive and may duplicate or conflict with existing requirements under the Rehabilitation Act of 1973, as amended and the Workforce Investment Act of 1998, as amended.

Response: Reports that State VR agencies provide to the Department of Education's Rehabilitation Services Administration (RSA) may be used to meet the reporting requirements in section 411.395. However, at this time, we cannot say whether these existing reports will provide us with all of the information we need to fulfill our reporting requirements. The periodic outcomes reports discussed in section 411.395(a) are required by section 1148(f)(4) of the Social Security Act. They are a new reporting requirement for State VR agencies functioning as ENs. The reports discussed in section 411.395(b) are required so beneficiaries may take advantage of the new protection in section 1148(i) of the Social Security Act which prevents us from initiating a continuing disability review when the beneficiaries are using a ticket. We will work with RSA to share information whenever possible and avoid duplication of State VR agencies' existing reporting burden.

Comment: One commenter indicated that § 411.395 should be written to reflect confidentiality issues as outlined in the Rehabilitation Act of 1973, as amended.

Response: We have not adopted this suggestion. The contract that the PM and ENs sign with SSA includes the requirement that access to confidential information must be restricted and that such information must be protected. Section 411.375 states that State VR agencies are required to provide VR services under a State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), even when functioning as an EN. This includes the confidentiality requirement that a State VR agency must follow.

Comment: One commenter noted that § 411.395 involves the State VR agencies in conducting reviews necessary to ensure that the beneficiary is making timely progress towards self-supporting employment while the same is not true for ENs. The commenter questioned why the EN wouldn't be able to validate that beneficiaries are making timely progress.

Response: Section 411.190 states that the PM will be using information provided by the EN or State VR agency in making the determination that a beneficiary is actively participating in his or her employment plan. Section 411.395(b) requires the State VR agency to submit this information. We are revising § 411.325 to require the same information from an EN.

Comment: This commenter also stated that the wording in § 411.395(b) should be changed from: ''The State VR agency must also submit information to assist the PM conducting the reviews necessary to assess a beneficiary's timely progress towards self-supporting employment to determine if a beneficiary is using a ticket for purposes of suspending continuing disability reviews'' to: ''The State VR agency must also submit information to assist the PM conducting the reviews necessary to assess a beneficiary's timely progress towards self-supporting employment to ensure a beneficiary is not using a ticket to avoid continuing disability reviews.''

Response: We are not adopting this comment. The purpose of the PM's review is to determine whether a beneficiary's active participation qualifies for CDR suspension under section 1148(i) of the Act. As long as a beneficiary is meeting the guidelines for timely progress toward self-supporting employment, the CDR suspension applies.

Section 411.405 When Does an Agreement Between an EN and the State VR Agency Have To Be in Place?

Comment: Commenters stated that § 411.400 (Can an EN to which a beneficiary's ticket is assigned refer the beneficiary to a State VR agency for services?) and § 411.405 should state that the agreements between ENs and

State VR agencies need to conform to the requirements of the Rehabilitation Act of 1973, as amended (29 U.S.C 720 *et seq.*)

Response: We have not adopted this suggestion. Section 1148(c)(3) of the Act, Agreements between State Agencies and Employment Networks, does not require that the State VR agency and EN agreement must conform to the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*).

Comment: Several commenters stated that there is no mention of ENs being able to enter into agreements with one-stop delivery systems established under the Workforce Investment Act of 1998.

Response: Section 1148(c)(3) of the Act provides that State agencies and ENs shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an EN to a State agency for services. Section 411.320 regulates the responsibilities of an EN in the Ticket to Work program. Section 411.320(c) provides that an EN may enter into agreements with other entities to provide employment services, vocational rehabilitation services, or other support services to a beneficiary.

On a related point, section 1148(f)(1)(B) of the Act states that an EN serving under the Ticket to Work program may consist of a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998, as amended. This provision is reflected in § 411.305(c) of these final regulations. As indicated in § 411.320(c), discussed above, a one-stop delivery system that is serving as an EN can enter into agreements as necessary to provide services to a beneficiary. As required of all non-State VR agency ENs, a one-stop delivery system that is an EN must have an agreement in place with a State VR agency before it can refer a beneficiary to the State VR agency for services.

Comment: One commenter stated that the regulations or preamble should clarify that the regulations do not require a separate agreement and may be satisfied by a local Memorandum of Understanding (MOU) established under title I of the Workforce Investment Act of 1998, or a modification to such MOU that contains the specified information.

Response: Section 1148(c)(3) of the Act does not specify the format of the agreements required between the State VR agencies and ENs. Any agreement must adhere to the requirements of § 411.400, which specifies that the agreement must be in writing and signed by the State VR agency and the EN prior to the EN referring any beneficiary to the State VR agency for services. If a MOU satisfies these requirements, it would constitute a valid agreement.

Section 411.410 Does Each Referral From an EN to a State VR Agency Require Its Own Agreement?

Comment: Another commenter noted that § 411.410 indicates that agreements between ENs and State VR agencies should be broad-based and apply to all beneficiaries who may be referred to the State VR agency for services. The commenter stated that broad-based agreements ignore the uniqueness of each case and may prohibit an individual from receiving specialized services that are necessary in order to return to competitive employment. The commenter also noted that there is no mention of whether the agreement between the EN and State VR agency can be terminated. The commenter recommended that, in addition to broad-based agreements, ENs and State VR agencies might also create distinct agreements based on the specific needs of the individual being served, and that both the EN and the State VR agencies should have the ability to terminate their agreement if the needs of the individual are not being served.

Response: We agree with the commenter's first recommendation. We are adding language to § 411.410 to indicate that the general guideline that the agreement should be broad-based and apply to all beneficiaries who may be referred by an EN to a State VR agency is not intended to preclude an EN and a State VR agency from entering into an individualized agreement to meet the needs of a single beneficiary if both the EN and the State VR agency wish to do so. What is agreed to in the agreement concerning the conditions for providing VR services to beneficiaries referred by an EN and the process for terminating the agreement must be negotiated between the State VR agency and the EN.

Section 411.420 What Information Should Be Included in an Agreement Between an EN and a State VR Agency?

Comment: Several commenters stated that SSA should not be establishing the terms of the agreement between the State VR agency and the EN in the regulations. Other commenters indicated that we should modify § 411.420 to provide minimum requirements for these agreements. One commenter stated that we should specify when the State VR agency will pay the ENs for services. Another commenter stated that the State VR agency would be in a position to negotiate terms of the agreement wholly favorable to its own interests. The commenter recommended that the rules should stipulate that each party to the agreement share reimbursement equitably, and that the rules to be applied by the PM in cases where disputes arise should be clearly defined prior to implementation.

Response: We are not establishing the terms of any agreement entered into between a State VR agency and an EN. Section 1148(c)(3) of the Act states that: ''State agencies and employment networks shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an employment network to a State agency for services. The Commissioner shall establish by regulations the time frame within which such agreements must be entered into and the mechanisms for dispute resolution between State agencies and employment networks with respect to such agreements.'' The Act does not provide SSA with the authority to set minimum standards or to regulate payment or fee schedules for these agreements. The introductory text of § 411.420 paraphrases the language in the Act regarding the basic nature of the agreements and paragraphs (a) through (d) of that section provide examples only of the types of information that could be included in any agreement. These regulations place no requirements on what should be included in an agreement.

Comment: Several commenters stated that, regardless of whether there is an agreement in place when a beneficiary is referred to a State VR agency, recently published Department of Education regulations, 34 CFR part 361, require State VR agencies to process all applications for services. The commenters noted that the State VR agencies will not be expected to expend program funds on services that are comparable to the services the individual is already receiving from the EN to which the individual's ticket is assigned. The commenters noted that further clarification is needed concerning a State VR agency's responsibility to provide additional needed services without a signed agreement with the EN.

Response: The Department of Education's, Rehabilitation Services Administration is the entity responsible for administering the State VR program. State VR agencies should contact the Rehabilitation Services Administration for guidance on expending State VR program funds on beneficiaries where no agreement exist with an EN.

Comment: Several commenters stated that §§ 411.405 to 411.430 do not address instances where individuals might have assigned their ticket to an EN, yet decide on their own to come to the State VR agency for additional services. In these instances, the EN is not making the referral, and an agreement may not be in place between the EN and the State VR agency. This may create a situation where a beneficiary is being served by both an EN and the State VR agency outside of the governance of an agreement. The commenters suggested expanding the rules in these sections to require that agreements will be in place between all ENs and State VR agencies, to ensure that all ticket holders are covered by an agreement.

Response: We are not adopting the commenters' suggestion. Section 1148(c)(3) of the Act requires agreements between State VR agencies and ENs regarding the conditions under which services will be provided when an individual is referred by an EN to a State VR agency for services. SSA does not have the authority to require an EN to enter into an agreement with a State VR agency unless the EN is going to make a referral of beneficiaries to a State VR agency for services.

Section 411.435 How Will Disputes Arising Under the Agreements Between ENs and State VR Agencies Be Resolved?

Comment: One commenter recommended a change to § 411.435(c)(2), to provide a time frame within which SSA must decide the matter in dispute between an EN and a State VR agency in a case where either party makes a timely request for SSA review following receipt of the PM's recommended resolution to the dispute. The commenter recommended adding a provision to provide that SSA will have 20 days to determine a resolution to the dispute.

Response: We do not agree that these regulations should establish a time frame for us to resolve disputes. We agree that we must resolve disputes as quickly as possible. However, a rigid time frame would be inadvisable due to the potential complexity of disputes involved.

Comment: One commenter noted that the rules do not mention the State VR agency's legal obligation to serve eligible individuals whether an agreement with an EN is in place. The commenter said it is essential that State VR agencies retain the ability to be paid under the cost reimbursement system.

Response: Under the Ticket to Work program, we will pay a State VR agency for providing services to a beneficiary who is issued a ticket and assigns or reassigns the ticket to the State VR agency if certain conditions are met. Section 411.355(a) of the final regulation states that State VR agencies may choose to participate either as an EN or under the cost reimbursement payment system, subject to the limitations in § 411.585. The section further states that the State VR agency makes this choice on a case-by-case basis. Section 411.370 states that a State VR agency generally is not restricted in making its choice of participating either as an EN or under the cost reimbursement payment system, with the exception of the rule under § 411.585.

Comment: One commenter questioned how a beneficiary who chooses an EN other than a State VR agency would access the State VR agency for assistance with assistive technology for employment purposes. The commenter observed that a person with a disability who needs assistive technology in order to work can request assistance from the State VR Agency. The commenter asks if this can be done under the Ticket to Work program without the beneficiary reassigning his or her ticket to the State VR Agency.

Response: If the EN to whom the beneficiary has assigned his or her ticket has a signed agreement with the State VR agency, the EN could refer the beneficiary to the State VR agency to secure the services needed. If the beneficiary's EN has not entered into an agreement with the State VR agency, the beneficiary's EN would be required to enter into an agreement with the State VR agency before the EN could refer the beneficiary to the State VR agency for services.

Comment: One commenter stated that the regulations suggest that there is only one State VR agency per State. The commenter noted that this is not true for all States. In some States, there is a separate blind services unit. The commenter asked whether two separate agreements have to be in place between the EN and the two VR entities in the State in such an instance.

Response: The configuration of the State VR agencies within the State government's organizational structure would determine if an EN would need to enter into an agreement with one or two State VR agencies in a particular State. We are clarifying the definition of State vocational rehabilitation agency in final § 411.115(m) to reflect that some States have more than one agency that provides VR services.

Subpart G—Requirements for Individual Work Plans

Section 411.450 What Is an IWP?

Comment: One commenter was of the opinion that State VR agencies would have to complete an IWP and an IPE based on this regulation.

Response: In accordance with 1148(c)(2) of the Act, the State VR agency will continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*) when providing services as an EN. The State VR agencies continue to prepare an Individualized Plan for Employment (IPE) for all clients served. We are clarifying § 411.450 so that it does not give the impression that a State VR agency is required to complete an IWP. In the first sentence of § 411.450 we added in parenthesis ''(other than a State VR agency)'' to clarify that State VR agencies are not required to complete an IWP.

Comment: A few commenters suggested that we add the definition of IWP in its entirety in the definition section of the rules.

Response: This suggestion was adopted. The IWP and many other new terms now are included in final § 411.115.

Comment: A few commenters wrote that whenever possible the regulations should encourage that the IWP and similar life/work planning instruments such as the IPE or individualized service delivery plan be used interchangeably.

Response: Other employment plans that are developed based on specific guidelines and laws may not be used as a substitute for the IWP unless they satisfy the requirements of the IWP in § 411.465.

Section 411.455 What Is the Purpose of an IWP?

Comment: One commenter suggested alternate language to describe the purpose of an IWP. The commenter suggested that the wording be changed to read ''Both parties should develop and implement the IWP in partnership in a manner that gives the beneficiary the opportunity to exercise informed choice in selecting an employment goal.'' The commenter also suggested using the term ''define'' in place of the term ''outline'' when naming services that will be provided under an IWP.

Response: The wording that was used in describing the purpose of the IWP was taken from the law. Section 1148(g)(1)(B) of the Act requires that ''[e]ach employment network shall * * * develop and implement each

such individual work plan, in partnership with each beneficiary.'' The intent of the IWP is to outline, not define, the services that have been mutually agreed to by the EN and the beneficiary.

Section 411.460 Who Is Responsible for Determining What Information Is Contained in the IWP?

Comment: One commenter stated that a beneficiary could not exercise informed choice if the EN was not required to provide the beneficiary with a comprehensive list of the services available to support and facilitate an IWP.

Response: Section 1148(g)(1)(B) of the Act requires the IWP to be developed in partnership with the beneficiary and the EN. ENs will offer services themselves, or coordinate the delivery of services by others, or both. The services that any individual beneficiary may require will present different opportunities for an EN to meet. Given the varied nature of the beneficiaries that an EN may serve and the services that an EN may provide or coordinate, we do not believe that a requirement to provide a comprehensive list of such services would be meaningful.

Comment: We received several comments noting that our proposed § 411.465 stated that an EN may not request or receive compensation from the beneficiary for the services they provide, even though the Rehabilitation Act and other programs allow and sometimes require beneficiaries to financially participate in the cost of their plan.

Response: Section 1148(b)(4) of the Act states that ''An employment network may not request or receive compensation for such services from the beneficiary.'' However, the Act does not prohibit an EN from requesting a beneficiary who has assigned his or her ticket to it to participate in the cost of achieving the employment outcomes agreed to in the IWP. Section 1148(c)(2) of the Act states that State VR agencies are to provide services under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*) when providing services as an EN. Therefore, section 1148 of the Act does not relieve a beneficiary from financially participating in the cost of an individualized plan for employment, if this is required by the Rehabilitation Act.

Comment: We received one comment noting that our proposed § 411.465 provided that an EN shall provide a statement of remedies available to the individual, including information about the availability of the advocacy services through the State P&A system. The commenter went on to discuss other regulations outside of the Ticket to Work program such as the Client Assistance Program (CAP) for resolving disputes. The commenter recommended that § 411.465 be revised to reflect services available to individuals who use the public VR system, such as the CAP.

Response: State VR agencies continue to provide services based on the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*). Therefore, the CAP would continue to be used by State VR agencies in resolving disputes between the State VR agency and the beneficiary. Section § 411.465 covers a beneficiary who signs an IWP with an EN other than a State VR agency.

Comment: One commenter suggested that the minimum requirements of the IWP specifically state that an EN use comparable benefits whenever available.

Response: We are not adopting this comment. The definition of ''comparable'' benefits is found in 34 CFR 361.53 and applies to State VR agencies. Section 1148 of the Act does not require ENs to determine whether comparable benefits are available when providing services to a beneficiary.

Comment: One individual expressed concerns that a beneficiary who assigns his or her ticket would lose the ticket if the beneficiary did not do what the EN requested.

Response: Participation in the Ticket to Work program is voluntary. An EN cannot take the beneficiary's ticket away for failure to comply with an EN's request. The beneficiary remains free to reassign his or her ticket to another EN.

Comment: A commenter suggested that the minimum requirement for an IWP include a statement about the beneficiary's responsibility to not reassign his or her ticket without good cause.

Response: We are not adopting this comment. Section 1148 of the Act does not require that the beneficiary have good cause for reassigning his or her ticket to another EN.

Comment: Several commenters suggested that time frames be identified for providing specific services.

Response: We are not adopting this comment. The IWP developed for an individual with a disability will vary based on the needs of the individual, their ability to progress based on the disability, and the employment goal that is established. Regulating time frames for providing services at such an early stage may be intimidating for some individuals or ENs. If the beneficiary and the EN feel comfortable with establishing time frames, they have the flexibility to do so under these regulations.

Comment: One commenter stated that within the requirements of an IWP there is a provision that the individual has a right of privacy without any further definition or clarification of the term privacy. The commenter expressed concern that an individual's decision not to share relevant information with an EN could be critical to the success of the individual's rehabilitation. The commenter recommended that the term ''privacy'' be removed or adequately defined. Another commenter asked what the requirements were for an EN to obtain medical information for the IWP and what the requirements were before the EN could share that information.

Response: Section 411.465(a)(8) requires that an IWP must include ''A statement of the beneficiary's rights to privacy and confidentiality regarding personal information, including information about the beneficiary's disability.'' The EN's contract with SSA will include the requirement that the EN protect an individual's privacy and confidentiality. Personal and medical information must be obtained through the beneficiary. Once the information is obtained from the beneficiary, the EN's contract requires the EN to preserve the privacy and confidentiality of these records.

Section 411.470 When Does an IWP Become Effective?

Comment: One commenter said that our description in the proposed rule of when an IWP becomes effective was unclear.

Response: We have revised § 411.470 to clarify when an IWP becomes effective.

Subpart H—Employment Network Payment Systems

General

Comment: Many commenters recommended that we redesign the proposed outcome-milestone payment system so that it would be more supportive of small-to-mid-sized providers. They said that smaller providers, unlike State VR agencies and other large service providers, do not have the reserves to absorb the risk of providing services over an extended period of time or when they are expensive. The commenters said that, if the outcome-milestone payment system fails to provide enough up-front financial incentives and it takes a substantial amount of time before ENs can claim reimbursement, the Ticket to Work program would restrict the pool of

providers and undermine consumer choice. Some said that the proposed rules offered little improvement over the alternative participant program for payment for VR services that was intended to expand beneficiary access under the traditional VR cost reimbursement program. The commenters were concerned that the rules, as proposed, would not enhance beneficiary access to services and would not be flexible enough to help ENs serve the diverse needs of the disabled beneficiary population. Also, they predicted that the proposed payment system would encourage providers to ''cream'' the easier-to-serve clients, place many in ''any'' job, as opposed to developing the sort of career opportunities that are likely to result in permanent gains for both consumers and SSA, and that providers would not serve those with more severe disabilities.

Response: In response to these comments, we made four changes to the outcome-milestone payment system we proposed. First, we added two milestones. Second, we doubled the total value of the potential milestone payments. Third, we spread, over 60 months as opposed to 12, the outcome payment reductions made on account of milestone payments received. Fourth, we substituted a flat outcome payment rate of 34 percent for the graduated monthly outcome payments we proposed. We did not narrow the gap between the two payment systems, as recommended by many commenters.

These changes are discussed further below, in response to specific comments.

Section 411.500 Definitions of Terms Used in This Subpart

Comment: A few commenters said that the sample payment calculation bases we provided in the preamble to the proposed rule (65 FR 82853) seemed low. They suggested that, when we compute the actual payment calculation bases, we include only the average cash benefits of beneficiaries eligible for tickets. These commenters and another commenter also suggested that we consider increasing the payment calculation bases, and therefore the potential payments to ENs, by taking into account the additional program revenues (e.g., FICA taxes) and other savings (e.g., reduced Medicare/Medicaid costs resulting from employer-provided health insurance plans) that are generated by having a beneficiary go to work.

Two other commenters said that using the average Federal payment amount for title XVI only beneficiaries as a payment calculation base was inflexible because it did not include State supplementation payments. The commenters said that the proposed calculations would not adequately compensate ENs that provide services in States where there are higher service costs or serve those who are the most disabled.

Response: We did not and can not modify these final rules with regard to the calculation of the payment calculation bases as the commenters suggested because section 1148(h)(4) of the Act provides specific requirements on how to calculate them. When we calculate the payment calculation bases, the law does not allow us to exclude the average benefit payable to non-ticket holders or to account for any FICA taxes or other benefit savings. In addition, section 1148(h)(4)(A)(ii) of the Act specifically directs us to exclude the State supplementation payment from the title XVI payment calculation base computation.

Comment: One commenter suggested that we expand proposed § 411.500(b) and (c) to explain that outcome payments can be affected by a beneficiary's impairment related work expenses (IRWEs) or the application of the provisions in section 1619(a) of the Act. Another commenter asked that we explain the effect of a beneficiary's trial work period (TWP) on the 60-month outcome payment period.

Response: We did not expand the final rules as the commenters suggested. The effect that employment support provisions can have on the disability benefits of those who work can vary depending on the individual case facts. To the extent that employment support provisions allow a beneficiary to receive a Federal cash benefit, they will prohibit us from making outcome payments with respect to the beneficiary. For example, the trial work period allows beneficiaries who receive title II disability benefits to test their ability to work for at least nine months. During this period they can receive full benefits regardless of how high their earnings might be so long as they have a disabling impairment. As long as the beneficiaries are in their TWP and receiving Federal cash disability benefits, their ENs would not qualify for outcome payments. We have a publication, A Summary Guide to Employment Support Available to People with Disabilities under the Social Security Disability Insurance and Supplemental Security Income Programs, SSA Pub. No. 64–030, that provides a general description of the employment supports available to beneficiaries with disabilities. This publication is available on our website at *http://www.ssa.gov/work/ResourcesToolkit/redbook_page.html.*

Section 411.515 Can the EN Change Its Elected Payment System?

Comment: Two commenters expressed concern that the 18-month time frame in proposed § 411.515(c) for offering ENs the opportunity to change their elected payment system was too long. According to one commenter, this long a period would hinder recruitment of potential ENs because providers will be looking for flexibility to help ease their apprehension over the risks associated with their participation. The other commenter suggested that we allow ENs to change their elections at least quarterly.

Response: We did not adopt these comments because we believe that the language in final § 411.515(b) and (c) is flexible enough to address these commenters concerns. Section 411.515(b) offers ENs the opportunity to change their elected payment system at any time during the 12 months following the later of the month they first elect an EN payment system or the month we implement the Ticket to Work program in their State. In addition, § 411.515(c) states that we will offer an open election period to ENs ''at least every 18 months.'' This language allows us to offer an open election period more frequently, if we believe it is warranted.

Section 411.525 How Are the EN Payments Calculated Under Each of the Two EN Payment Systems?

Comment: A few commenters urged us to relate the EN payment systems more to the cost of services, especially for those with more extensive service needs. Along these lines, one commenter suggested that we consider making the VR cost reimbursement payment system available to ENs. This commenter also suggested that we make payments whenever ENs establish that they provided significant efforts and services to assist beneficiaries because this commenter believes that improving the vocational skills of beneficiaries will ultimately lead to the reduction or elimination of benefits. We also received a recommendation for paying a stipend to vocational trainers and beneficiaries in lieu of 60 months of outcome payments.

Response: We did not adopt these suggestions because the Ticket to Work program is an outcome-based program and the law does not provide authority for the types of payments identified by the commenters. We therefore cannot design a payment system around the cost of services, even for those with

more extensive service needs, or to make stipend payments in lieu of outcome payments. We do not have the authority to extend the VR cost reimbursement program to ENs that are not State VR agencies.

Comment: One commenter believed that the outcome payments we proposed were too low. Based on experiences in welfare reform, this commenter did not believe that the proposed payment system would attract a wide variety of service providers. The commenter expressed the belief that the Ticket to Work program would be viewed as risky for providers because they lack the experiential data with which to estimate beneficiary work efforts. The commenter also believed that the proposed payment system would not attract smaller service providers because of the cash-flow concerns that such providers would have. Agreeing that an outcome based payment system was fiscally responsible, this commenter suggested we ''front-load'' the outcome payments in the first year, paying as much as 100% of the saved benefits. Then, in subsequent years, we could reduce payments some, but leave enough to encourage the ENs to provide for follow-up support services.

Response: We did not adopt this comment. Section 1148(h)(2)(C) of the Act limits payments under the outcome payment system to 40 percent of the payment calculation base.

Comment: We received several comments about the two substantial gainful activity (SGA) dollar thresholds in proposed §§ 411.525(a)(1)(ii)(A) and 411.535(a). The commenters were concerned that ENs might be discouraged from serving beneficiaries who are statutorily blind because the SGA threshold amount for them (currently $1,240) is higher than it is for those who are not statutorily blind (currently $740). Thus, the commenters recommended that we use the lower SGA threshold amount when we determine whether to pay an EN, regardless of the beneficiary's disability.

Response: We did not adopt this suggestion because we do not believe it appropriate to have a threshold amount for outcome or milestone purposes for beneficiaries who are blind that is not equal to the blind SGA threshold amount for benefit determination purposes. Individuals who are blind have several protections, including a higher earnings threshold. Thus, we believe that payments due an EN should reflect this higher limit.

Comment: Many commenters had two concerns about the proposed differences in the payments for title II and title XVI beneficiaries. The first is that the proposed payment levels for title XVI only beneficiaries would be substantially lower than for title II (including concurrent) beneficiaries. The second is that since section 1619(a) of the Act allows for a gradual reduction of title XVI benefits, it may take longer for title XVI recipients to achieve outcome payments than it would for title II beneficiaries. For example, a title XVI recipient who receives the maximum SSI benefit would need to earn $1,145 in order to reduce benefits to zero and generate an outcome payment, while a title II beneficiary who is not blind would need to earn just over $740 in a month to reduce benefits to zero and generate an outcome payment. The commenters contended that SSI recipients are likely to have more severe disabilities, less education and work history, and require more intensive and extensive supports. The commenters said that the lack of a uniform income level to trigger outcome payments made the Ticket to Work program confusing. They predicted that the differences will discourage ENs from serving title XVI recipients. Also, they said that our proposed formula overlooked the additional cost savings from reduced reliance on title XVI benefits and increased employment taxes paid by working beneficiaries. The commenters recommended that we increase the payment levels to ENs for serving title XVI only beneficiaries, with some suggesting we pay ENs the same amount regardless of whether they serve a title XVI only or a title II beneficiary. The commenters also recommended that we establish a uniform income level as a trigger for outcome payments and allow for outcome payments based on a partial reduction of title XVI Federal cash benefits.

Response: We cannot adopt the commenters' recommendations to make outcome payments for title XVI only beneficiaries richer or to let an alternative event, such as the partial reduction in benefits, trigger outcome payments. The law is very specific about how we are to calculate payment levels and what events trigger outcome payments. However, the law also provides for us to study and report to Congress on the extent to which the Ticket to Work program has been successful and what further modifications should be made. Specifically, section 1148(h)(5)(C) of the Act requires us to evaluate and report on the adequacy of the incentives for ENs to serve four specific groups of individuals. They are individuals with a need for ongoing support and services, individuals with a need for high-cost accommodations, individuals who earn a sub-minimum wage and individuals who work and receive partial cash benefits. Also, section 101(d)(4) of Public Law 106–170 requires a broader evaluation and report on the success of the Ticket to Work program. Therefore, we will be studying how effective the program is in serving title XVI beneficiaries.

We based our proposal for the payment levels on section 1148(h)(2)(C) and 1148(h)(4)(A) of the Act. Under section 1148(h)(2)(C) of the Act, we have to base outcome payments on a fixed percentage of the payment calculation base for the calendar year in which the month occurs. With respect to the payment calculation base, section 1148(h)(4)(A) of the Act provides for two payment calculation bases. The first is based on the average monthly title II disability insurance benefit payable for months during the preceding calendar year. We must use it in connection with a title II beneficiary. The second payment calculation base is based on the average monthly payment of title XVI benefits based on disability (excluding State supplementation) payable for months during the preceding calendar year to beneficiaries aged 18 through 64. We must use this second payment calculation base in connection with a title XVI beneficiary who is not concurrently a title II beneficiary.

We based our proposal to limit outcome payments to situations in which monthly Federal SSI cash benefits to a title XVI disability beneficiary stop due to work or earnings on sections 1148(h)(2)(B), (k)(4), and (k)(5) of the Act. Under section 1148(h)(2)(B) of the Act, an outcome payment month is a month, during an individual's outcome payment period, ''for which benefits (described in paragraphs (3) and (4) of subsection (k)) are not payable to such individual because of work or earnings.'' With respect to a title XVI disability beneficiary, the benefits described in section 1148(k)(4) of the Act are ''supplemental security income benefits under title XVI'' based on blindness or disability. The term ''supplemental security income benefit under title XVI'' is defined in section 1148(k)(5) of the Act to mean ''a cash benefit under section 1611 or 1619(a),'' excluding any State supplementary payment. Thus, in formulating the proposed rules on outcome payments for a title XVI beneficiary, we considered an outcome payment month to be one ''for which [a cash benefit under section 1611 and a cash benefit under section 1619(a)]

* * * are not payable to the individual because of work or earnings.''

Comment: Many commenters were concerned that proposed § 411.525(b) set the payment rate for the outcome-milestone payment system at about 85 percent of what would be payable under the outcome payment system for the same beneficiary. They said that this difference was too great to attract small or specialized providers that do not have the financial resources to pay for all of the up-front cost of services. The commenters predicted that the difference would discourage the use of the outcome-milestone payment system, impede the delivery of services to those with more severe disabilities, and undermine the Ticket to Work program's goal of increasing consumer choice.

The commenters recommended that we close the gap between the two payment systems to create an incentive for as many providers as possible to participate in the Ticket to Work program. Many suggested that we narrow the gap to the bare minimum possible under the law; with two commenters saying that a one dollar difference would meet the letter of the law. Others suggested specific rate differentials ranging from 95 to 99 percent.

Response: We did not adopt these commenters' suggestions to close the gap between the two payment systems. We believe that if we close the gap too much, there would be no incentive for ENs to choose the outcome payment system and, by default, we would have one rather than two EN payment systems, and that one system would be the outcome-milestone payment system. Under the law, we are to offer providers two EN payment systems and we are to make the outcome-milestone payment system the less financially rewarding of the two. In return for the opportunity to receive up-front milestone payments, providers choosing the outcome-milestone payment system receive a smaller total potential payment amount than under the outcome payment system. If there is not a meaningful difference to the total payments available under the two systems, all providers would choose the outcome-milestone payment system because it offers payments earlier. Such a result could jeopardize the success of the program as a whole because the outcome-milestone payment system, by offering payments to providers before SSA has achieved any program savings, increases the risk that government outlays in the form of milestone payments will not be subsequently offset with savings from the nonpayment of benefits. As we begin to implement the Ticket to Work program, we will collect data and use it to determine if we should continue to apply the same rate differential between the two systems.

Comment: One commenter asked if an EN would be entitled to the remainder of the 60 months of outcome payments if an individual dies or turns age 65 first.

Response: No. In final §§ 411.155(a) and 411.525(c) we state that we will not pay an EN for milestone or outcomes achieved in or after the month in which a beneficiary's ticket terminates. The events that cause a ticket to terminate are listed in § 411.155.

In all cases, death is an event that would cause a ticket to terminate. It is a terminating event for benefit entitlement/eligibility purposes, and thus is covered by the provisions in § 411.155(a)(1). Also, we refer to death in § 411.155(c)(4) of the final rules as a ticket-terminating event for those whose entitlement/eligibility to disability benefits have ended/terminated because of work or earnings.

In most cases, a beneficiary's ticket will also terminate when the individual attains age 65 or, where appropriate, full retirement age. Attaining full retirement age is a terminating event for workers who are entitled to Social Security disability benefits, and thus is covered by the provisions in § 411.155(a)(1). We also refer to full retirement age, or to age 65, in § 411.155(a)(2), (a)(3), and (c)(3) of the final rules as a ticket-terminating event.

The only instance in which attainment of age 65 or retirement age, would not cause disability benefits, and hence the ticket, to terminate is if the individual is still entitled to childhood disability benefits. However, we will not pay an EN for any of the remainder of the 60 months of the outcome payment period in such a case unless the rules in § 411.525(a)(1)(i) are met. They provide that an EN may receive a monthly outcome payment only for months in which no benefits are payable because of work or earnings.

Section 411.530 How Will the Outcome Payments Be Reduced When Paid Under the Outcome-Milestone Payment System?

Comment: Many commenters were critical of our proposal in § 411.530 to reduce the first 12 outcome payments under the outcome-milestone payment system by the total amount that we had already paid for milestone payments. They said that such a short reduction period would discourage smaller, less well-capitalized ENs from participating in the Ticket to Work program. Referring to this proposal as ''back loading,'' they noted that it would mean that the fifth year of monthly outcome payments would be three times higher than the payments in the first year. They were concerned that an EN might lose the bulk of the payments available should a beneficiary leave them shortly after beginning to work. The commenters recommended that we reduce all 60 outcome payments equally, rather than just the first 12 outcome payments, to account for milestone payments already made.

Response: We agree with these comments and revised § 411.530. In the outcome-milestone payment system, we will reduce each outcome payment that an EN receives by an amount equal to 1/60th of the milestone payments already made to that EN based on a ticket.

With regard to the commenters' concerns about the loss of payments when a beneficiary leaves an EN shortly after beginning to work, an EN may make a claim for payment for any future milestones or outcomes the beneficiary achieves. Final § 411.560 provides that payments can be split among ENs which have had a beneficiary's ticket assigned to them.

Comment: Many commenters said that having milestones based on the SGA threshold amount was an inappropriate standard for title II beneficiaries who previously used up most or all of their trial work period before getting their tickets. Their concern was that ENs might not receive milestone payments if the beneficiaries reached the outcome payment period before achieving any milestones.

Response: In response to this comment we are modifying final § 411.530 to make clear that under the outcome-milestone payment system we will reduce only outcome payments based on the amount of milestone payments an EN receives. If we do not make milestone payments to an EN with respect to a particular ticket, we will not reduce the EN's outcome payments.

This had been our intent when we proposed this rule, but we were not clear on two points. First, we did not identify whose outcome payments we would reduce when more than one EN receives outcome payments based on the same ticket and one receives milestone payments and the other does not. Our intent is to reduce the outcome payments of the EN that actually receives the milestone payments. Second, the proposed rules indicated that we would reduce outcome payments by milestone payments already made. In the final rules we deleted the word ''already'' because

there may be situations in which we make a retroactive payment for a milestone that a beneficiary achieved before the outcome payment period began. In such a case, we will have to make an adjustment for any outcome reductions we did not take before we made the retroactive milestone payment, and we will reduce any future outcome payments by an amount equal to 1/60th of all milestone payments we made to that EN.

Section 411.535 What Are the Milestones for Which an EN Can Be Paid?

Comment: Many commenters suggested that we add one or more pre-employment milestones to the outcome-milestone payment system we proposed to ensure that ENs can provide adequate pre-employment services to disability beneficiaries. Some suggested milestones at specific times, for example, when ENs make vocational assessments, when beneficiaries and ENs sign IWPs, when ENs purchase assistive devices for beneficiaries, or when ENs place beneficiaries in jobs. Others suggested that we make the milestones more flexible, for example, tie them to a measurable goal in the IWP, such as the completion of an educational goal or the acquisition of specified job skills.

These commenters were concerned about the two milestones we proposed, the first of which would not occur until after beneficiaries work for at least three months at the SGA threshold amount. They believed these milestones would not occur early enough in the service period and would not allow payment for the substantial early costs incurred in providing individuals with significant disabilities the necessary services that are directly related to achieving the goal of permanent employment. While the commenters acknowledged that paying for an employment outcome is a worthy goal, they said that we should have balanced that goal against the ability to recruit and retain ENs. Most small-to-mid sized ENs, they explained, simply do not have the capital to wait, potentially, six months to a year or more to receive their first payments from SSA, especially when one considers the staff time and cost of pre-employment services required to serve individuals with significant disabilities. They believe that the lack of a more flexible and front-loaded outcome-milestone payment system may discourage providers from participating and thereby significantly limit beneficiary choice.

The commenters also said that the milestones were supposed to be a method of risk sharing between SSA and providers, but that the two we proposed would delay and otherwise limit cash flow and force ENs to assume all of the risk. One community-based agency said it was unfair of SSA to ask currently under-funded, community-based organizations to accept yet another burden of providing services without compensation. In a similar vein, a State agency expressed concern that since their State funds many programs involving providers that could become ENs, the milestones, as proposed, would have the effect of shifting up-front funding costs to the State, unless and until the providers receive Federal payments.

Response: We did not adopt any of the commenters' suggestions for establishing pre-employment milestones. Our major concern with offering them is that of projected costs. The events associated with pre-employment milestones occur so early in the process of moving a beneficiary to independence that we project a significant number of beneficiaries who would achieve them would not eventually leave the disability rolls because of work or earnings. Accordingly, there would not be sufficient savings from the eventual nonpayment of benefits to offset the initial cost outlays associated with having pre-employment milestones. For this reason, we tied the milestones in these final rules to beneficiary work activity, when there is an increased likelihood of permanent employment and of achieving outcomes.

Comment: Many commenters urged us to add to and modify the post-employment milestones we proposed. Among the suggestions we received were those to link the milestones to length of job retention only (e.g., three, six, and nine months), without regard to the amount earned. Also, there were suggestions to have a milestone system that steps up to the SGA threshold amount for the final payment because many beneficiaries ease into their work and gradually increase their earnings. Others suggested that we substitute the recently raised trial work period amount (i.e. $530) for the higher SGA threshold amount (i.e. $740 for those who are not statutorily blind and $1,240 for those who are statutorily blind). In addition, we received suggestions to have specific title XVI milestones based on a percentage of reduction in cash benefits and to add a milestone for 12 months of employment at the SGA dollar amount.

Response: In response to these comments we amended final § 411.535 to add two milestones to the two that we originally proposed. The first additional milestone is met when the beneficiary works for one calendar month and has gross earnings from employment (or net earnings from self-employment) for that month that are more than the SGA threshold amount. The other additional milestone, which is actually the fourth milestone, is met when the beneficiary works for 12 calendar months within a 15-month period and has gross earnings from employment (or net earnings from self-employment) for each of the 12 months that are more than the SGA threshold amount. In making these changes, we renumbered the two milestones we originally proposed as the second and third milestones. Also, we provide that any of the work months used to meet the first, second, or third milestones may be used to meet a subsequent milestone.

We do not anticipate that the changes we are making to the milestones in these final rules will be the only ones that we will make. Section 1148(h)(5)(B) of the Act directs us to periodically review the number and amount of the milestone payments, and authorizes us to make alterations, if necessary, to ensure that they allow for adequate incentives for ENs to serve beneficiaries with disabilities. Thus, as we begin to implement the Ticket to Work program in the 13 initial States, we will continue to consider the various suggestions that we received with regard to milestone payments.

At this time, however, we do not support the recommendations for a milestone system based solely on length of job retention or on lower levels of earnings so that beneficiaries can ease into their work. While length of job retention can be an important factor in determining whether benefits continue, so is the level of earnings, and we believe that that level ought to at least exceed the SGA threshold amount. This amount is a gross dollar amount, not the net earnings that remain after we deduct the various employment supports an individual may receive. Also, we do not favor the recommendations to structure SSI milestones on a percentage of reduction in cash benefits. Many factors (e.g., unearned income and impairment-related work expenses, to name a few) go into making SSI payment decisions. Thus, it would be difficult to know whether a given percentage reduction in cash benefits is due to work or to other factors, such as unearned income, without carefully examining each SSI payment calculation.

Comment: A few commenters urged us to build incentives into the EN payment systems to reward ENs for each additional client they move into the workforce and for each client they help

to get better jobs, i.e. jobs that include benefits and provide a livable wage. Along these lines, many commenters urged us to adopt milestones provisions that would encourage ENs to serve those who need more costly or more extensive services to become work ready. Some suggested that we have individualized milestone criteria for those who need ongoing support services or high-cost accommodations when working, earn subminimum wages, or work but still receive partial cash benefits (e.g., section 1619(a) recipients). Other commenters suggested that we adopt a two-tiered milestone system like the ones used by some States that administer supported employment programs. Under such a system those in the second tier would get customized milestones when, due to the nature of their disabilities, the pre-defined milestones in tier one are unworkable. In addition, many suggested that we consult with providers who have experience in milestone payment systems and redesign our system.

Response: We did not adopt these recommendations because it is impracticable for us to implement them at this time, given the size of the ticket population and its diversity. Like these commenters, we want the design of our EN payment systems to increase the number of ENs serving our beneficiaries. However, we have a responsibility to see that our expenditures under the program do not exceed program savings. As we gather experiential data, we will carefully look at who is being served and what design changes we can propose to broaden the number of beneficiaries being served and increase the number of those finding employment that will firmly establish their self-sufficiency. We will consult with experts in the field, as needed, and consider the effects of these suggestions in terms of beneficiary needs, program operations, and costs. Further, section 1148(h)(5)(C) of the Act requires us to submit a report to Congress on the adequacy of the incentives in the Ticket to Work program for four groups of individuals. They are those with a need for ongoing support and services, those with a need for high-cost accommodations, those who earn a subminimum wage, and those who work and receive partial cash benefits.

Section 411.540 What Are the Payment Amounts for Each of the Milestones?

Comment: Many commenters told us that the payments we proposed to offer as milestones (i.e. approximately 10 percent of potential payments under the outcome-milestone payment system) are inadequate and urged us to increase the amounts so as to encourage more small-to-mid-sized providers to participate in the Ticket to Work program. Some of these commenters suggested that we use a graduated fee system and pay based on the level of earnings a beneficiary receives. Others suggested that we base the milestone payments on a percentage of the true cost of services an EN provides. Still others suggested that we allow the PM to negotiate a fixed fee with each EN. We also received many recommendations for specific fees as well as many recommendations for a total package of milestone payments that ranged from $3,500 to $7,500.

Response: We agree with the commenters that some increase in the total milestone package would help to encourage more providers to serve as ENs. Therefore, in these final rules, we doubled the total value of the milestones that ENs may receive to approximately 20 percent of the potential payments possible under the outcome-milestone payment system. In terms of the 2001 payment amounts this equates to milestone payments totaling $3,096 for title II (including concurrent) beneficiaries and $1,874 for title XVI only beneficiaries.

To accomplish this increase in the milestone payments, we modified final § 411.540. We provided that the two milestones we added—the first and fourth milestones—would equal 34 percent and 170 percent of the payment calculation base for the calendar year in which each occurs. This represents approximately 10 percent of the potential payments possible under the outcome-milestone payment system. In addition, in final paragraphs (e) and (h) we explain the term ''month of attainment'' for the new milestones.

We do not believe that it is administratively practicable to adopt a graduated fee system, to set individual fees, or to have the PM negotiate fees with each EN. Also, we believe a $7,500 milestone package is excessive when there is no guarantee that individuals who achieve milestones will also achieve outcomes that result in program savings.

Section 411.545 What Are the Payment Amounts for Outcome Payment Months Under the Outcome-Milestone Payment System?

Comment: Several commenters suggested that we offer a flat payment rate for outcome months under the outcome-milestone payment system. They found the graduated monthly outcome payments we proposed in § 411.545 to be unnecessarily complex and predicted they would be more difficult to manage.

Response: We have adopted this suggested change and have modified the rules. Final § 411.545 provides that the payment for an outcome payment month under the outcome-milestone payment system is equal to 34 percent of the payment calculation base for the calendar year in which the month occurs, rounded to the nearest whole dollar, and reduced for milestone payments made, as required by the rules in § 411.530.

Section 411.555 Can the EN Keep the Milestone and Outcome Payments Even if the Beneficiary Does Not Achieve All 60 Outcome Months?

Comment: One commenter asked whether an EN would be responsible for paying back any payments it receives if a beneficiary stops working and goes back on the benefit rolls.

Response: An EN may keep each milestone or outcome payment for which the EN is eligible, even if the beneficiary subsequently stops working and returns to the benefit rolls. In some instances, however, we may find it necessary to adjust a milestone or outcome payment that the EN receives.

In proposed § 411.555, by reference to proposed § 411.560, we provided for such adjustment when another EN, to which the beneficiary assigned the ticket, requests payment for the same milestone or outcome. As we drafted these final rules, we realized that there may be other instances in which an adjustment may be necessary, and thus we expanded final § 411.555, to explain these other instances.

Paragraph (a) of final § 411.555 provides a general statement that ENs may keep those milestone and outcome payments for which they are eligible. Paragraph (b) of final § 411.555 discusses the EN payment adjustments we may make if we determine that we paid more or less than the correct amount due. This paragraph also provides two examples of situations requiring such an adjustment. One example refers to the aforementioned adjustments for payment allocations required by § 411.560. The other is an example of an adjustment described in § 411.590(d) that results from a corresponding determination or decision that we make about a beneficiary's right to benefits. Finally, paragraph (c) of final § 411.555 explains that we will notify ENs of any revised payment decisions. It also references our payment dispute rules in § 411.590(a) and (b).

Section 411.560 Is It Possible To Pay a Milestone or Outcome Payment to More Than One EN?

Comment: We received two comments about the consequences of a beneficiary reassigning the ticket to another EN. One commenter said that the proposed rules were not clear with regard to whether we would pay the first EN. The other commenter was concerned with the repercussions of expecting ENs to absorb the cost of the resources expended on those who reassign their tickets. This commenter predicted that concern over beneficiaries reassigning a ticket would cause some providers to decline to participate in the Ticket to Work program, and others who decide to be ENs would serve only those beneficiaries with the greatest potential for success in the timeliest fashion.

Response: We can pay an EN after a beneficiary reassigns the ticket to another EN. Final § 411.560 states we can pay more than one EN and the PM will determine how much to allocate to each EN based upon the services provided. Additionally, final § 411.565 provides that if two or more ENs qualify for payment on the same ticket, we will pay each according to its elected EN payment system.

If we receive a claim from one EN that we determine is payable, we will make a reasonable attempt to notify any other EN that has held the beneficiary's ticket and still has an agreement with us to serve under the program of its opportunity to claim a share of the payment. Similarly, if we receive a claim from the beneficiary's current EN that we determine is payable, we also will make a reasonable attempt to notify any State VR agency that previously held the beneficiary's ticket and had chosen to be paid as an EN based on that ticket, of the opportunity to claim a share of the payment.

Comment: A few commenters suggested that we provide additional rules to further define the provisions of proposed § 411.560 regarding how the PM will determine payment allocation to more than one EN. These commenters were concerned that the Ticket to Work program is intended to pay ENs based on employment outcomes and the last sentence in this proposed section said that the PM would make payment allocations based ''upon the services provided by each EN.''

Response: We agree that the proposed wording was unclear. The fourth sentence of final § 411.560 now says that the PM will base the payment allocation determination upon the contribution of the services provided by each EN toward the achievement of the outcomes or milestones. In addition, we added a fifth sentence to the final rules to clarify that outcome and milestone payments will not be increased because the payments are shared between two or more ENs.

Section 411.570 Can an EN Request Payment From the Beneficiary Who Assigned a Ticket to the EN?

Comment: One commenter questioned the use of the term ''compensation'' in proposed § 411.570. This section prohibits an EN from requesting or receiving compensation from the beneficiary for the services it provides. The commenter hoped that this section would not prevent a beneficiary from purchasing items at any retail establishment the EN may operate just because the EN holds the beneficiary's ticket.

Response: We believe that in the context of these regulations it is clear that the EN may not charge a beneficiary for the employment, vocational rehabilitation, or support services it provides. This regulation does not prohibit a beneficiary from purchasing items unrelated to the services the EN is providing to the beneficiary in any retail establishment the EN may have.

Comment: One commenter asked whether an EN could receive funding from another agency, other than a State VR agency, while serving a beneficiary with a ticket.

Response: ENs may receive funding elsewhere. Other than payments we will make to ENs, the Ticket to Work program does not address how ENs are funded.

Section 411.575 How Does the EN Request Payment for Milestones or Outcome Payment Months Achieved by a Beneficiary Who Assigned a Ticket to the EN?

Comment: Many commenters objected to the rules in proposed § 411.575(b)(2) that would require ENs to submit evidence of beneficiary earnings when they request outcome payments because the commenters believe that the task of tracking such earnings is the Social Security Administration's responsibility. Some commenters simply recommended that we not involve ENs in the process. Others recommended that we partner with the Internal Revenue Service (IRS) to develop a reliable means of receiving earnings information. Still others recommended that we assign the PM the responsibility of acquiring and validating earnings documentation from IRS or another source. There were also suggestions to use the earnings data posted to our own earnings records and the earnings information which working beneficiaries are required to report to us.

Response: We did not adopt these suggestions. Our goal in proposing that ENs submit evidence of monthly beneficiary earnings in order to receive outcome payments was to facilitate the EN payment process. Under the Ticket to Work program, we cannot make outcome payments for any month for which a beneficiary receives a Federal cash disability payment from us. Accurately and expeditiously tracking earnings and adjusting monthly benefits is a difficult task. Beneficiaries are responsible for telling us when work occurs. For various reasons, this does not always happen, or does not happen on a timely basis. We currently use earnings reports that we receive from the IRS and other sources to alert us to unreported earnings situations. However, the reports we get can be a year old, are in annual or quarterly formats, and are not always primary sources of earnings. As a result, we must undertake extensive development to verify monthly earnings and employment supports before adjusting benefits. Thus, we continue to believe that ENs, which will be working with and helping beneficiaries get and retain employment, will be able to supply documentation of earnings and this will speed up the benefit adjustment, and hence, the EN payment process.

Comment: Some commenters suggested that rather than requiring ENs to submit evidence of earnings, we develop a system or mechanism to notify ENs when a beneficiary's disability benefits stop. Then, ENs will know when to file requests for outcome payments.

Response: We did not adopt this suggestion. We do not presently have the systems interface capability to automatically notify ENs when a beneficiary's benefits stop on account of work or earnings. Further, based on the rules in §§ 411.525(a)(1)(ii)(A) and 411.575(b)(1)(i)(B), once an individual's entitlement to Social Security disability benefits ends or eligibility for SSI benefits based on disability or blindness terminates because of work or earnings, we still need evidence that the individual had gross earnings in a month that are more than the SGA threshold amount in order to make an outcome payment.

Comment: Many commenters, representing both large and small service providers, objected to the provisions in proposed § 411.575(b)(2), (b)(4), and (b)(5) that would require ENs to submit evidence of beneficiary earnings on a monthly or bimonthly basis. They said that the proposed rules

were complex, expensive, and excessively burdensome on both ENs and employers. Also, many predicted that the rules would deter providers from participating in the Ticket to Work program.

The commenters expressed concern with the costs and feasibility of establishing a tracking system that could monitor the monthly earnings of multiple beneficiaries over an extended period of time, especially when beneficiaries switch employers, are not continuously employed, or move to areas the EN does not serve. Some commenters also said that ENs would not be able to obtain monthly earnings information on an ongoing basis from those who assign their tickets to other ENs, achieve independent employment, or leave the disability rolls and no longer have an incentive to cooperate with their EN. Even commenters who said that they presently have access to State records of employment wages pointed out that such records would not be a good source of evidence under our proposed rules. That is because these are quarterly, not monthly, wage reports, and they can be over a year old. Another commenter said that the proposed requirement to report earnings at least every two months would be difficult for State VR agencies, especially once they close a beneficiary's case.

Many commenters suggested that we allow ENs to submit evidence of quarterly, rather than monthly, earnings and to do so on a quarterly or semi-annual basis, as opposed to a monthly or bimonthly basis. There were also suggestions to pay ENs in the event that ticket holders do not provide the needed earnings information and to assist ENs in documenting earnings when beneficiaries reassign their tickets to other ENs.

Response: In response to these comments, we consolidated the earnings documentation requirements for outcome payments into one paragraph and made two changes. First, final § 411.575(b)(2) now requires ENs to submit their payment requests, along with evidence of beneficiary work or earnings, on at least a quarterly basis. Second, this paragraph includes an exception to this general rule to provide for those situations in which the ticket is no longer assigned to the EN that files the request for payment. In such cases, the EN is not required to submit evidence of beneficiary work or earnings, although of course any evidence submitted in these cases will help to expedite our processing of the payment request.

Comment: One commenter said that we should not place a mandatory earnings-reporting requirement on ENs. Instead, this commenter suggested that we require ENs to request a time-limited release for earnings information from each beneficiary. Then, if the beneficiary signs the release, we should require the EN to report earnings information to us, to the extent that the beneficiary continues to cooperate with the EN.

Response: We did not adopt this suggestion. We believe that the method ENs use to collect earnings information from beneficiaries does not need to be regulated by us. Rather, it is something that both parties should discuss and reach an agreement on before the ticket is assigned. For example, they may decide to reference the agreed-to collection method in the IWP.

Comment: Commenters were concerned that the second sentence of proposed § 411.575(b)(2) was burdensome. It would require ENs to submit ''sufficient'' proof of work or earnings for us to determine whether we can stop the beneficiary's monthly Federal cash benefits due to work or earnings. One of these commenters pointed out that this sentence was inconsistent with how we actually evaluate a beneficiary's work or earnings because there was no mention of our work incentive provisions. For example, payroll records may show ''sufficient'' earnings to stop benefits, but we may decide to continue benefits because a beneficiary is in a trial work period, has an impairment related work expense or a plan for achieving self-support, or receives a subsidy.

Response: We agree with the commenters and removed this sentence from final § 411.575(b)(2).

Comment: Many commenters were concerned with the last sentence in proposed § 411.575(b)(2). It stated that wage evidence for employees is ''best obtained from the employer or the employer's designated payroll preparer.'' Some commenters said that this sentence poses significant confidentiality issues, especially for beneficiaries who have not disclosed their disability to their employers. Two commenters noted that an EN could just as easily obtain this same information from the beneficiary's pay stubs and one of these commenters suggested that we permit ENs to submit photocopied, as opposed to original, pay stubs. Another commenter said the information could be retrieved from State wage records, and one commenter suggested we allow for the use of Unemployment Insurance wage records. In addition to these comments, many said that having ENs collect earnings information from any source might violate the right of beneficiaries to keep such information confidential and private from ENs, if they so choose.

Some of these commenters recommended that we specify what other types of earnings documentation we would consider acceptable and indicate where ENs could obtain them. One commenter suggested that we allow for the use of payroll records retrieved from State taxation departments.

Response: In response to these comments, we included two additional examples of the types of evidence that ENs may submit with their payment requests in the second sentence of final § 411.575(b)(2). They are an unaltered copy of the beneficiary's pay stub and an unaltered copy of the beneficiary's estimated tax return if self-employed. These are not the only sources of evidence we will accept, and the PM, in its EN training material, will discuss what other types of evidence that ENs may submit.

We retained the example of a statement from the employer or the employer's designated payroll preparer because we consider this evidence to be of high probative value. However, we would not expect an EN to request this information or, for that matter, an employer to provide it without a beneficiary's signed consent.

Comment: With respect to proposed § 411.575, one commenter asked how an EN's ability to collect payments would be affected by a delay in our stopping disability benefits to a working beneficiary.

Response: In most situations, an EN's eligibility for a payment will depend on SSA's determination about a beneficiary's right to payment. Briefly, there are three different payment scenarios, two of which are related to outcome payments, and the other concerns milestone payments.

- The first scenario relates to when we are asked to make an outcome payment under either the outcome payment system or the outcome-milestone payment system while the beneficiary is still entitled under title II or eligible under title XVI. (It is possible for a beneficiary to be entitled or eligible, but to not receive cash benefits.) Before we can make an outcome payment to the EN, we must determine whether the payment of Social Security disability benefits and Federal SSI cash benefits to an otherwise entitled or eligible beneficiary is precluded because of work or earnings.
- The second payment scenario relates to when we are asked to make

payment to an EN in connection with an individual whose entitlement or eligibility for disability benefits has terminated due to work or earnings. In such a situation, payment to an EN will depend on whether the individual has earnings for a month that meet the earnings requirements in § 411.525(a)(1)(ii)(A), and whether the requirement in § 411.525(a)(1)(ii)(B) is satisfied.

• The third payment scenario involves an EN's request for a milestone payment. Our determination regarding a milestone payment will depend on whether the requirements concerning duration of work and level of earnings for attainment of a particular milestone are met and whether attainment of the milestone occurs before the start of the individual's outcome payment period. As noted in § 411.500(b), the outcome payment period begins with the first month, ending after the date on which the ticket was first assigned, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual due to work or earnings. If the start of the outcome payment period is an issue with regard to a request for a milestone payment, then we may have to make a determination about a beneficiary's right to payment.

Comment: We received suggestions not to recover any overpayments to ENs or beneficiaries that result from the earnings reporting system we use and a suggestion to provide for a specific payment time frame to ensure ENs of prompt payment following the submission of accurately documented payment claims. Along similar lines, many commenters suggested that SSA institute a 90-day payment processing rule. Under such a rule, the PM would have 30 days to submit EN reported earnings to us and then SSA would have 60 days to stop or adjust a beneficiary's check. Should we fail to stop or adjust benefits within this time frame, these commenters recommended that we pay the EN's claim immediately, as though benefits had stopped, and not hold the beneficiary liable for any overpayment.

Response: We did not adopt the suggestions to not recover or not hold beneficiaries liable for overpayments because, except in the case of milestone payments, the statute does not allow us to pay an EN and the beneficiary for the same month. Therefore, in order for us to pay one party, we must recover any overpayments we may have made to the other party.

Also, we did not incorporate any payment time frames into these final rules. The earnings documentation that ENs submit will help us to make more timely decisions. However, we must still develop all relevant issues and adhere to strict due process guidelines before we adjust or stop a beneficiary's benefits. Additionally, in SSI cases, we must offer to continue benefits should a beneficiary appeal our determination to stop benefits.

Comment: Two commenters discussed the outcome payment system and how a beneficiary's use of work incentive provisions such as plan for achieving self-support (PASS) and impairment-related work expenses (IRWE) could prevent some ENs from getting paid. Their concern was that those beneficiaries with more intensive service needs would not be served. One of these commenters said that ENs might not fully disclose or explain to beneficiaries that beneficiaries have these other work incentives available, and that ENs may rush beneficiaries to benefit suspension, in order to generate outcome payments for the EN.

Response: We hope that all beneficiaries who want to work will receive services, and that, when they begin to work, they will avail themselves fully of all of the various work incentive provisions of the Act. We will monitor any complaints about ENs discouraging beneficiaries from using the work incentive provisions. In addition, to eliminate any possibility of a conflict of interest, in these final rules we deleted the provision in proposed § 411.575(b)(3) that encouraged ENs to submit beneficiary-completed Work Activity Reports (Form SSA–821s) with their requests for outcome payments. Usually, Social Security field personnel request beneficiaries to complete and return this form when work activity is reported and assist beneficiaries when needed. We originally thought it would speed our determinations about work or earnings if ENs obtained this form and submitted it to us with their payment requests. However, the form contains questions about special working conditions and payments and impairment-related work expenses. In light of these comments, we believe the beneficiaries should obtain the form from Social Security field personnel, and should complete it with their assistance, not the EN's.

Beneficiaries have many sources of information about our other work incentives such as PASS and IRWE. Section 1149 of the Act, as added by section 121 of Public Law 106–170, requires that SSA establish a corps of work incentives specialists within SSA who will specialize in disability work incentives and who will disseminate accurate information on work incentives to disability beneficiaries and to benefit applicants. We have created a new position called the employment support representative to fulfill this requirement to create a corps of work incentives specialists. These specialists will also assist organizations awarded funds by SSA to provide information about work incentives.

Section 1149 of the Act requires us to establish a program of grants, cooperative agreements, or contracts for State or private agencies or organizations to provide benefits planning and assistance to beneficiaries with disabilities. Under this program, we have awarded funds to organizations in every State and U.S. territory in order to disseminate accurate information about the various work incentives provisions available to title II and title XVI disability beneficiaries. The organizations receiving funds from SSA will provide information, guidance, and planning to beneficiaries with disabilities on the availability and interrelation of Federal and State work incentives programs, on health coverage, and on the availability of protection and advocacy services and how to access such services.

Under a program authorized by section 1150 of the Act, we are awarding grants to State protection and advocacy systems in every State, in the District of Columbia, in five U.S. territories, and to the protection and advocacy system for Native Americans. These grants will allow the protection and advocacy systems to assist beneficiaries with disabilities in obtaining information and advice about receiving vocational rehabilitation and employment services, as well as advocacy and other services that a disabled beneficiary may need to secure or regain gainful employment.

We believe that these programs and our efforts will ensure that disability beneficiaries are more fully informed about all of the work incentives provisions available to them.

Comment: One commenter asked about the consequences for an EN if we deny an EN's claim for payment due to inaccurate wage information or other reasons.

Response: Generally, the only consequence is that the claim will be denied and the EN will not receive payment. However, if we believe that the issue of inaccurate wage reporting involves the possibility of fraud, we will investigate the issue fully and take appropriate action.

Of course, if an EN disagrees with our decision on a payment request, we will follow the rules in § 411.590(a) to resolve the dispute. Similarly, if a State VR agency, serving a beneficiary as an EN, disagrees with our decision on a

payment request under an EN payment system, we will follow the rules in § 411.590(b) to resolve the dispute.

Section 411.585 Can a State VR Agency and an EN Both Receive Payment for Serving the Same Beneficiary?

Comment: One commenter, referring to the introductory text of proposed § 411.585, suggested that the final rules provide guidance on how a shared payment to an EN and a State VR agency that decides to serve a beneficiary as an EN would be calculated.

Response: We amended the introductory text of final § 411.585 to provide a cross-reference to final § 411.560, which explains how a PM will make a shared payment EN determination.

Comment: We received a number of comments, from both inside and outside of the State VR system, about the proposal in § 411.585 (a) and (b) to preclude payment under one of the EN payment systems if a State VR agency first receives payment under the cost reimbursement payment system, and vice-versa. Several of these commenters questioned the legal basis for this provision. They said that they found nothing in the legislative history or statute that would prohibit payments under both systems. Further, they argued that our proposal would negate beneficiary choice and ultimately harm those with significant disabilities who could benefit from services under both the VR cost reimbursement and EN payment systems.

Some of the commenters also said that our proposal seems to assume that the EN payment systems and the cost reimbursement payment system pay for identical services. Their interpretation of the EN payment systems is that they provide for long-term supports that help beneficiaries maintain productive employment over 60 months. These commenters view the cost reimbursement payment system as one that allows State VR agencies to close cases after 90 days of employment and collect payment when beneficiaries achieve a continuous 9-month period of SGA.

Those who commented on § 411.585 recommended that we revise it. They believe that the Ticket to Work program should accommodate both the EN and the cost reimbursement payments systems for serving the same beneficiary.

Response: We did not revise final § 411.585 to allow for payment with respect to a ticket under both the traditional cost reimbursement system and an EN payment system because we believe to do so would be contrary to how we believe Congress intended for the two programs to operate together, and to do so could undermine the Ticket to Work program's goal of realizing program savings while moving beneficiaries to independence. The first two sentences of section 1148(c)(1) of the Act provide State VR agencies with the option of electing to participate in the Ticket to Work program as an EN with respect to a beneficiary. The third sentence of section 1148(c)(1) of the Act allows State VR agencies the additional option of choosing, on a case-by-case basis, to be paid under the cost reimbursement payment system when serving a beneficiary with a ticket. Had Congress intended to allow for payments under both the cost reimbursement payment system and the EN payment systems with respect to the same individual with a ticket, there would have been no need for the third sentence of 1148(c)(1). The authority to reimburse State VR agencies under the cost reimbursement payment system already existed under sections 222(d) and 1615(d) and (e) of the Act. We believe that Congress included the third sentence in section 1148(c)(1) of the Act to make the securing of services by a beneficiary with a ticket from a State VR agency electing cost reimbursement a mutually exclusive alternative to a beneficiary's obtaining services from an EN. This view of section 1148(c)(1) of the Act is shared by the Congressional Budget Office (CBO) in the cost estimates it submitted to the Senate Committee on Finance (Senate Report No. 106–37, March 26, 1999, page 41) and the House Committee on Commerce (House Report No. 106–220, July 1, 1999, page 19). In their reports the CBO stated that the Ticket to Work program would ''partially displace the current'' cost reimbursement program.

Another provision of the enabling legislation that supports our regulatory limitation on payments in § 411.585 is section 1148(e)(3) of the Act. It provides that a beneficiary may change ENs without being deemed to have rejected services under the Ticket to Work program; that, when such a change occurs, the PM shall reassign the ticket based on the choice of the beneficiary; and that, ''[u]pon the request of the employment network, the program manager shall make a determination of the allocation of the outcome or milestone-outcome payments based on the services provided by each employment network.'' These provisions do not contemplate a beneficiary switching providers or having SSA or the PM allocate payments among providers in a case where one of the providers is a State VR agency that has chosen to be paid under the cost reimbursement payment system.

Section 1148(h) of the Act also supports the regulatory limitation on payments in § 411.585. This section limits the total number of outcome payments that we can make on a ticket under either EN payment system to 60 payments. Once this limit is reached, the ticket ceases to have any further value for purposes of making payments under either EN payment system. Since the third sentence of section 1148(c)(1) of the Act gives State VR agencies the option of being paid under the cost reimbursement payment system instead of being paid under one of the EN payment systems (not in addition to being paid under the EN payment systems), we believe that once we pay a State VR agency under this system for having served a beneficiary, the ticket ceases to have value for purposes of making payments thereafter under either EN payment system.

Comment: One commenter expressed concern that the rules in § 411.585 did not address how State VR agencies would be paid for the cost of the services they provide to beneficiaries whose tickets are held by an EN. On one hand the State VR agencies cannot limit the services they provide to eligible individuals. On the other hand, an EN that holds the ticket of a beneficiary who requires expensive technological services to work could not be expected to reimburse a State VR agency for the cost of such services from the monies the EN would receive under the Ticket to Work program.

Response: The authorizing legislation of the Ticket to Work program does not give us the authority to decide how or whether State VR agencies will be reimbursed by ENs for the services they provide to beneficiaries whose tickets are held by ENs. Section 1148(c)(3) of the Act provides that State VR agencies shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an EN to a State VR agency for services. Our rules in § 411.400 through 411.435 address the agreements between State VR agencies and EN and how disputes will be resolved.

Comment: Some commenters expressed concern that the provisions in § 411.585 could lead to abuses should ENs actively recruit beneficiaries who are near the end of their employment plans after State VR agencies have put substantial resources into serving them.

Response: We understand these concerns, however, we believe that State

VR agencies and ENs will use the provisions in the Ticket to Work program to work together to serve our beneficiaries in ways that give the beneficiaries expanded access to employment, vocational rehabilitation, and support services. We will make every effort to ensure that beneficiaries can make informed choices about the providers available to them, the nature of the services they offer, and how a provider's payment system election may affect the beneficiary's future use of the ticket.

Comment: One commenter suggested that we make provision for State VR agencies to share their cost reimbursement payments with ENs, with the PM resolving any disputes.

Response: We do not have the statutory authority to adopt this suggestion. Section 1148(e)(3) of the Act provides for the PM to make determinations about allocating outcome and milestone payments. However, there is no similar provision for allocating cost reimbursement payments between a State VR agency and an EN that serve the same beneficiary.

Section 411.587 Which Provider Will SSA Pay if, With Respect to the Same Ticket, SSA Receives a Request for Payment From an EN or a State VR Agency That Elected Payment Under an EN Payment System and a Request for Payment From a State VR Agency That Elected Payment Under the Cost Reimbursement Payment System?

Comment: One commenter suggested that, if we did not revise § 411.585 to allow for payment under both the cost reimbursement and the EN payment systems with respect to the same ticket, we specify the criteria we would use when deciding which provider to pay.

Response: In response to this comment, we added § 411.587 to these final rules. This section clarifies which provider we will pay if, with respect to the same ticket, we receive a request for payment from a provider that elected an EN payment system and one from a State VR agency that elected the cost reimbursement payment system. Paragraph (a) of § 411.587 explains that we will pay the claim of the provider that first meets the requirements for payment under its elected payment system applicable to the beneficiary who assigned the ticket. Paragraph (b) of this section explains which provider we will pay should both meet the payment requirements in the same month. In such a case, we will pay the claim of the provider to which the beneficiary's ticket is currently assigned. If the ticket is not currently assigned to either provider, we will pay the claim of the provider to which the ticket was most recently assigned.

Section 411.590 What Can an EN Do if the EN Disagrees With Our Decision on a Payment Request?

Comment: Many commenters found two issues troubling in proposed § 411.590(d) concerning what an EN can do if it disagrees with a revised determination which we make about a beneficiary's right to benefits following a beneficiary's appeal of a determination which is unfavorable to the beneficiary and which affects the beneficiary's entitlement, eligibility, or right to a benefit payment. First, commenters believed that the proposed section highlights the possibility of an EN having to return payments following a beneficiary's successful appeal, which the commenters said would act as a disincentive for providers to serve as ENs. Second, they disliked the provision which permits an EN to furnish any evidence it has which may be relevant to the beneficiary's appeal. The commenters said this rule would create an adversarial situation and harm the relationship between beneficiaries and ENs.

Response: We understand the concerns that these commenters have about the disability determination and payment process and resulting effect it can have on the EN payment process. That is why we decided to refer to this process, which we call the administrative review process, in proposed § 411.590(d). Also, we do not want the process to create an adversarial relationship between beneficiaries and ENs. That is why we clearly state in § 411.590(c) and (d) that an EN cannot appeal a determination we make about a beneficiary's right to benefits, but they may furnish evidence in support of their claims for payment.

Sections 404.900 *et seq.* and 416.1400 *et seq.* explain the administrative review process we have under title II and title XVI of the Act. Determinations we make about a beneficiary's right to disability cash benefits are administrative actions that are subject to review. Generally, if beneficiaries are dissatisfied with a determination we make, they have a 60-day period in which to request further administrative review, and ultimately court review. Additionally, if they do not request a review within these time frames, they may request that we reopen and revise a determination we previously made about a beneficiary's right to cash benefits, or we may decide to this on our own initiative. Since the EN payment systems are inherently linked to the determinations we make about a beneficiary's right to cash benefits, there will be situations in which we make, amend, or otherwise revise a determination relating to a beneficiary's right to cash benefits, and that determination will result in an EN having to return a payment we previously made to them. However, we are hopeful that our efforts to educate beneficiaries and ENs about the various employment support provisions in the Act and to remind them of their reporting responsibilities will increase understanding of how work may affect a beneficiary's right to cash benefits, which in turn will help us to minimize the number of instances in which we must revise EN payment decisions.

As we reviewed the provisions we proposed to respond to these comments, we realized that the rules we proposed in § 411.590(d) did not cover all of the possible administrative actions that we might make about a beneficiary's right to disability cash benefits. Therefore, we reorganized and broadened the language in the final rules so that they refer to all determinations we may make about a beneficiary's right to benefits, not just those determinations that a beneficiary may appeal. In addition, we referenced our rules in § 411.555 concerning the adjustment of EN payments when we determine we paid more or less than the correct amount.

Section 411.597 Will SSA Periodically Review the Outcome Payment System and the Outcome-Milestone Payment System for Possible Modifications?

Comment: Many commenters suggested that we initiate, as soon as possible, the research needed for the Report on the Adequacy of the Incentives provided in the Ticket to Work program, as required by section 1148(h)(5)(C) of the Act. They said that they had identified the report as a key initiative to assure that those with severe disabilities are able to participate fully in the Ticket to Work program. Thus, they urged us to begin collecting the information as soon as possible and suggested that we collect data on matters such as the reasons ENs decline to offer services to one or more groups of the four groups specifically identified in the law.

Response: We agree with the commenters that the information gathered for this report will play a key role in the development of future policies and proposals for possible legislative changes to assist beneficiaries participate more fully in the Ticket to Work program. As soon as the Ticket to Work program is operational, we will begin collecting data on all four groups mentioned in the statute, including data

on the reasons ENs may decline to serve them.

Comment: Many commenters suggested that we use our demonstration authority to test various payment options and funding schemes in the initial rollout States. Some recommended that we test three or four varying milestone and payment amounts to determine which would best attract appropriate ENs for hard to serve populations. One specific recommendation was that we test offering outcome payments for reduced cash benefits when, due to the nature of a beneficiary's condition, the beneficiary can achieve only lower levels of employment. Another recommendation was that we test making outcome and milestone payments richer for cases involving SSI beneficiaries and encourage States to contribute a portion of the saved SSI State supplementation payment. In addition, there was a suggestion to test up-front capitalization funding via matching Federal and State dollars.

Response: We will consider all of these interesting demonstration ideas as we continue to explore the best ways to serve beneficiaries with disabilities and reduce their barriers to work and self-sufficiency.

Subpart I—Ticket to Work Program Dispute Resolution

Public comments on subpart I of the proposed rules raised a number of issues relating to the dispute resolution processes. An overall theme in the comments was that review and appeal mechanisms should be more elaborate than required by the legislation. The Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), provides a process for resolution of disputes between beneficiaries and ENs that are State VR agencies. The Commissioner has developed a different 3-step process for resolving disputes between beneficiaries and ENs that are not State VR agencies.

The rules for this 3-step dispute resolution process provide common sense guidelines that give both parties to the dispute several opportunities to be heard. The rules permit disputants to resolve quickly, easily, and fairly issues that arise between them. The 3-step dispute resolution process for resolving disputes between beneficiaries and ENs that are not State VR agencies affords a full and fair review of issues in dispute. A discussion of specific issues raised in the public comments and our responses follow.

Comment: Some commenters stated that we should provide beneficiaries and ENs that are not State VR agencies an opportunity for a face-to-face hearing. Several recommended that the administrative and judicial review process for appeal of initial determinations (§§ 404.900 through 404.999 and 416.1400 through 416.1499) be used for the dispute resolution process. One commenter suggested that beneficiaries should be entitled to the rights customary to evidentiary hearings, including the right to be provided notice, the right to request discovery, the right to present evidence, the right to defend oneself, the right to cross-examine witnesses, the right to a written decision, and the opportunity to appeal. Another commenter stated that the time frame for appeal of a decision should be 60 days to be consistent with time frames in our administrative review process.

Response: Section 1148(d)(7) of the Act requires, among other things, that the Commissioner provide a mechanism for resolving disputes between beneficiaries and ENs. The Commissioner is required to afford a party to such a dispute a reasonable opportunity for a full and fair review of the matter in dispute. The Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), provides a process for resolution of disputes between beneficiaries and ENs that are State VR agencies. The Commissioner has developed a different process for resolving disputes between beneficiaries and ENs that are not State VR agencies.

We believe that the dispute resolution process we have created provides the parties with a reasonable opportunity to have a full and fair review of the matter in dispute. Section 1148(d)(7) does not require the Commissioner to afford a face-to-face hearing. The legislation did not allocate funding to support this type of process. Disputes between beneficiaries and ENs relate to aspects of the rehabilitation process, such as proposed changes in the vocational goal and the Individual Work Plan, the nature and duration of education and training, and the type and availability of equipment provided. Multiple disputes may arise between a beneficiary and the EN at different points in the rehabilitation process, and each dispute will require quick resolution to maintain ongoing rehabilitation efforts. Submission of these types of disputes to the administrative and judicial review process reserved for critical payment issues would impose unacceptable administrative and financial burdens on the Agency. This would also disrupt the rehabilitation process while relatively minor issues could remain unresolved during a lengthy appeal process.

We are retaining the 3-step process set forth in the proposed rules, because this process meets the statutory mandate for a full and fair review of disputes between beneficiaries and ENs that are not State VR agencies. It provides the parties several opportunities to be heard, allows both parties to the dispute to present their case before an impartial third party, the PM, and expedites dispute resolution.

Comment: Many commenters questioned whether the 3-step process for resolving disputes between beneficiaries and ENs that are not State VR agencies provides a full and fair review. Several commenters proposed that we establish a single, standard grievance model at step one for use by all ENs that are not State VR agencies. Other commenters said that we should provide beneficiaries clear information about the dispute resolution process, including defined ''next steps,'' impose reasonable time frames, and inform disputants of the right to be represented and the right to provide evidence at each step of the dispute resolution process. In addition, one commenter said that the PM should be required to provide all the evidence, not just relevant evidence, when a dispute is referred to us at step 3.

Response: The 3-step process in subpart I provides for expedient resolution of disputes between beneficiaries and ENs, and a full and fair review of the disputed issues. Requiring ENs that are not State VR agencies to implement a standard grievance model of our design at the first step of the 3-step dispute resolution process would impose unfair burdens on them. ENs are voluntary participants in the Ticket to Work program, and some ENs might choose to withdraw from this program if required to implement a new process distinct from internal grievance procedures already in place.

In subpart I, we require that:

At step one, the EN that is not a State VR agency is required: to have grievance procedures that a beneficiary can use to seek a resolution to a dispute under the Ticket to Work program; to give each beneficiary seeking services a copy of its internal grievance procedures; to inform each beneficiary seeking services of the right of either party to refer a dispute first to the PM for a review, and then to us for a final decision; and to inform each beneficiary of the availability of assistance from the State P&A system.

At step two, if the beneficiary or the EN that is not a State VR agency asks the PM to review a disputed issue, the PM is to contact the EN to submit all relevant information and evidence

within 10 days, including a description of the disputed issue, a summary of the beneficiary's and the EN's positions related to each disputed issue, and a description of any solutions proposed by the EN, including the reasons the beneficiary rejected each proposed solution. The PM has 20 days to provide a written recommendation resolving the dispute, and explaining the reasoning for the proposed resolution.

At step three, if the beneficiary or the EN requests SSA to review the PM's recommended resolution of the dispute, this request must be made within 15 working days of the receipt of the PM's recommendation. The PM has 10 working days to refer the request to us for a review, including with the request a copy of the beneficiary's IWP, information and evidence related to the disputed issues, and the PM's conclusions and recommendations. Our decision on the resolution of the dispute will be final.

Comment: Some commenters suggested that the process for resolving disputes between beneficiaries and ENs that are not State VR agencies should provide for optional mediation or an external appeals process to ensure the beneficiary an unbiased resolution of the dispute. Several commenters said that the Dispute Resolution Board mentioned in the preamble to the proposed rules for this process should have non-SSA employees. Another commenter stated that the third step should be eliminated and the final decision delegated to the PM at step two.

Response: In developing these rules, we considered making outside mediation part of the dispute resolution process, but we rejected this option, in part, because we believe using an outside mediator would not achieve expedient dispute resolution. We also believe that it is not necessary to establish any external appeals process for dispute resolution, because we believe the three-step process provides for a full and fair review. We have deleted any reference to a dispute resolution board, as the proposed rules did not provide for it, but it was only mentioned in the preamble to the proposed rules. At step three, disputes will be referred to SSA rather than to a formal board. We do not agree that step three should be eliminated from the dispute resolution process and that the PM should make the final dispute decision. An appeal to SSA affords the beneficiary an additional opportunity to be heard and to receive the Commissioner's opinion on the issue.

Comment: Some commenters stated that the dispute resolution process for disputes between beneficiaries and ENs that are not State VR agencies should be the same as the process that is used for those disputes between beneficiaries and ENs that are State VR agencies.

Response: State VR agencies that are serving as ENs have dispute resolution procedures in place already. The dispute resolution process used by State VR agencies provides an opportunity for beneficiaries and State agencies to resolve disputes by formal mediation, an impartial hearing, or civil action. The dispute resolution process that the State VR agencies are required to follow fulfills and exceeds the requirement of section 1148(d)(7) of the Social Security Act for a full and fair review of the matter in dispute.

We recognize that beneficiaries who choose to work with State VR agencies will have a different dispute resolution process than those who choose to work with non-State agency ENs. However, the 3-step process described in the regulations provides these beneficiaries with a full and fair review, in an expeditious and cost-efficient manner.

Comment: Several commenters pointed out that our proposed rules were not clear with respect to whether they addressed both ENs that are not State VR agencies and those that are. Several others stated that the regulations should indicate when the provisions of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), relating to opportunities for mediation, an impartial hearing, and court action apply.

Response: We are revising the rules in subpart I to clarify whether they referred to ENs that are not State VR agencies, or those that are State VR agencies.

Comment: One commenter stated that services and supports provided to a beneficiary should not be suspended or reduced while the beneficiary is involved in the dispute resolution process. Another asked if the timely progress guidelines would be suspended immediately when a dispute is not solved.

Response: Participation of ENs in the Ticket to Work program is voluntary. We believe that requiring ENs to continue providing supports or services until disputes are resolved would not be consistent with these aspects of the program. The timely progress guidelines will not be suspended when a dispute remains unsolved.

Comment: Several commenters stated that we should provide beneficiaries the names and addresses of P&A services and representatives. One commenter suggested we should notify P&A services of all disputes and the names of disputants, unless the beneficiaries specifically objected. Another commenter stated that we should ensure all representatives are expert in all aspects of benefits. And, several commenters suggested that legal services for beneficiaries involved in disputes be paid for.

Response: Section 411.605(d) requires ENs that are not State VR agencies to inform beneficiaries of the availability of P&A services to assist them in the dispute resolution process. We will not release any information to a P&A service about the beneficiary unless we are authorized to do so, in accord with our regulations governing disclosure of official records and information (20 CFR 401.100 ff.). We will require ENs to inform beneficiaries of the right to be represented at each step of the dispute resolution process. We do not have the authority to pay such representatives. We are not establishing standards of expertise for representatives, because this would impair the beneficiary's ability to choose non-attorneys to help them with their disputes (e.g., family members, clergy, members of the rehabilitation community). The ability to use non-attorneys to represent beneficiaries in minor disputes is especially important because many beneficiaries may not be able to pay for representation.

Comment: Several commenters suggest we require disputants to adhere to our final recommendations for resolving issues between them.

Response: Because the Ticket to Work program is voluntary in nature, the good will and commitment of both parties to the rehabilitation effort is critical to its successful outcome. The three-step dispute resolution process should promote positive and productive communication between these parties. We do not believe that mandating participants to adhere to our recommendations for dispute resolution would further the rehabilitation partnership.

Youth in Transition to Adulthood

Section 411.125 of these final regulations states that an individual will be eligible to receive a ticket in a month in which he or she is age 18 or older and has not attained age 65, provided the individual has qualified for title II benefits based on disability or qualified for title XVI benefits based on disability under the adult standard or based on blindness.

When we published the proposed rules on December 28, 2000, we included the following: ''As we gain experience with the Ticket to Work program, we plan, at a later time, to explore the possibility of expanding the

age criteria for receiving a ticket to include those SSI beneficiaries age 16 and older who are eligible for disability benefit payments based on the childhood disability standard.''

In these final rules, we have decided not to issue a ticket to those recipients under age 18 and those who have attained age 18, but for whom we have not yet conducted a redetermination of their eligibility under the disability standard for adults. However, we are interested in exploring various approaches to assist youth beneficiaries to transition to independence, further education, and careers in the workforce. Therefore, we are publishing a Notice elsewhere in today's **Federal Register** in which we are seeking suggestions from the public to assist us in designing for these beneficiaries an approach that could complement the Ticket to Work program.

Electronic Version

The electronic version of this document is available on the Internet at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the Internet site for SSA at *http://www.ssa.gov*.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory activity under Executive Order (E.O.) 12866. Thus, OMB has reviewed these final rules. For the five-year period from fiscal year 2002 through 2006, the effects on the Old Age, Survivors and Disability Insurance benefit payments range from minimal in fiscal year 2002 to costs of $27 million in fiscal year 2006. For the same period, the effects on Federal Supplemental Security Income payments range from savings of $1 million in fiscal year 2002 to savings of $6 million in fiscal year 2006. We expect that the effects on expenditures of the Medicare and Medicaid programs during that time period would be negligible. As the costs and savings from fiscal year 2002 through 2006 are not expected to exceed $100 million in any one year, these final rules are neither economically significant under E.O. 12866, nor ''major'' under the provisions of 5 U.S.C. 801 *et seq.*

However, we believe there may be additional ''benefits'' to society that will result from these rules. While these benefits are difficult to quantify, we can present some general elements of these benefits.

We believe the Ticket to Work program offers potential benefits to society on several levels. For example, the Ticket to Work program may increase opportunities for individuals who receive disability benefits to access training, employment and placement services, including opportunities to create their own businesses and widen their exposure to the employment market. The program may provide new funding streams for existing providers of vocational services and give them access to new clients, as well as allow them to forge relationships with employers interested in job placement of these clients. It may also encourage the establishment of new providers of vocational services. For employers, the program may provide access to a new base of potential employees as individuals who receive disability benefits attempt to enter the employment market under the terms of the Ticket to Work program.

As required by the Ticket to Work and Work Incentives Improvement Act of 1999, we must evaluate the Ticket to Work program after it is implemented. As part of that evaluation, we plan to use various qualitative measures to determine the effects on society.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they would primarily affect only individuals, and those entities that voluntarily enter into a contractual agreement with us. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Although a regulatory flexibility analysis is not required, we have made every effort to consider the effects these rules might have on small entities that might choose to participate in the Ticket to Work program. As we mentioned earlier in this preamble, we sponsored and participated in many public forums, presentations, and discussions leading up to the development of these final rules. At these forums, we discussed with service providers their concerns about participating in the Ticket to Work program. These final rules reflect our efforts to make these rules as inclusive as possible; that is, to allow for the participation in the program of many different types of vocational service providers, including small entities, that can provide a wide range of services. For example, we increased the number and total amount of milestone payments, from what we had earlier proposed, to help smaller or lesser-capitalized entities to participate in the program. We also considered the effects on small entities in determining the level of credentials a service provider must have to participate in the program. At the same time, we must also consider our stewardship responsibilities in protecting the public funds and in assuring that individuals receiving disability benefits who choose to participate in the Ticket to Work program also receive quality services from the providers to whom they assign their tickets. We believe these final rules reflect our efforts to achieve a balance between providing opportunities for small entities, and protecting public funds and assuring that individuals receiving disability benefits receive quality services.

Federalism

We have reviewed these final rules under the threshold criteria of E.O. 13132, ''Federalism,'' and determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The Ticket to Work and Work Incentives Improvement Act of 1999 established the Ticket to Work program that will complement the existing State vocational rehabilitation program.

Although we have determined that these final rules do not trigger the requirements of E.O. 13132, we have consulted with State vocational rehabilitation agencies and their national organization throughout our development of these rules. As mentioned earlier in the preamble to these rules, we sponsored and participated in numerous educational forums throughout the country in order to stimulate discussion about the Ticket to Work program. We employed our long-standing relationship with the State vocational rehabilitation agencies through a variety of meetings, forums and other conversations to gain insight as to how to develop these rules. Furthermore, we have consulted on a regular basis with those States selected for the first round of the Ticket to Work rollout, and the Department of Education's Rehabilitation Services Administration in preparing these rules. These final rules reflect, to the extent practicable, our efforts to respond to the issues raised by the States during these consultations.

In addition, we note that the Old-Age, Survivors and Disability Insurance program is exempt from the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This final rule contains new reporting (Rpt), recordkeeping (Rec) and disclosure (Dis) requirements in the sections listed below. These burden requirements have been cleared under OMB Number 0960–0644. The clearance expires on December 31, 2004.

TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM ANNUAL BURDEN CALCULATION CHART

Section No. and requirements	Number of respondents	Frequency of response	Average burden per response (in minutes)	Estimated annual burden hrs.
411.140(c) Rpt—X-refer sections 411.145, 411.150, 411.325 (a), (b), (c), (d) & 411.320 (f).	31,450	One time	270	141,525
411.325(e) Rpt—X-refer section 411.395 (b)	10,328	Quarterly	120	20,656
411.325(f) Dis—X-refer section 411.395(a)	45,000	Occasional ..	5	3,750
411.190(a) Rpt—X-refer section 411.195	1,000	One time	30	500
411.220(b)(1) Rpt—	1,000	One time	30	500
411.220(c)(1) Rpt—	500	One time	5	42
441.245(b)(1) Rec—	12,000	One time	1	200
411.325(d) Rpt—	1,800	One time	480	14,400
411.365 Rpt—	82	One time	240	328
411.575 Rpt—X-refer section 411.500	13,000	Daily	30	6,500
411.605(b) Dis—X-refer section 411.610	45,000	Occasional ..	5	3,750
411.435(c) Rpt—	2,582	One time	60	2,582
411.615 Rpt—	3,000	One time	60	3,000
411.625 Rpt—	1,500	One time	60	1,500
411.210(b) Rpt—	3,145	One time	30	1,573
411.590(b) Rpt—	813	One time	60	813
411.655 Rpt—	1	30-per year ..	120	60
411.200 Rpt—	1	.....	1	1
Total Annual Respondents	.....	.....	.....	172,202
Total Annual Burden Hours	.....	.....	.....	201,680

X-Refer—Burden for these sections has been accounted for under title section cited.
411.200—Reflects a one hour places holder pending implementation and program experience.

The below chart represents burden associated with forms SSA–1365, State Agency Ticket Assignment Form; SSA–1366, State Vocational Rehabilitation Ticket to Work Information Sheet, and SSA–1367, Individual Work Plans (IWP) Information Work Sheet, that have been cleared under OMB–0641. The clearance expires on April 30, 2002.

Forms	Respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
SSA–1365	21	4,048	3	4,250
SSA–1366	21	132	2	92
SSA–1367	31,450	1	3	1,573
Total burden	.....	.....	.....	5,915

(Catalog of Federal Domestic Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 411

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income; Public Assistance programs; Vocational Rehabilitation.

Dated: December 18, 2001.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are adding a new part 411 to chapter III of title 20 of the Code of Federal Regulations to read as follows:

PART 411—The Ticket to Work and Self-Sufficiency Program

Subpart A—Introduction

Sec.

Subpart B—Tickets Under the Ticket to Work Program

Authority: Sec. 1148 of the Social Security Act (42 U.S.C. 1320b–19); sec. 101(b)–(e), Pub. L. 106–170, 113 Stat. 1860, 1873 (42 U.S.C. 1320b–19 note).

Subpart A—Introduction

§ 411.100 Scope.

The regulations in this part 411 relate to the provisions of section 1148 of the Social Security Act which establishes the Ticket to Work and Self-Sufficiency Program (hereafter referred to as the ''Ticket to Work program''). The regulations in this part are divided into ten subparts:

(a) Subpart A explains the scope of this part, explains the purpose and manner of implementation of the Ticket to Work program, and provides definitions of terms used in this part.

(b) Subpart B contains provisions relating to the ticket under the Ticket to Work program.

(c) Subpart C contains provisions relating to the suspension of continuing disability reviews for disabled beneficiaries who are considered to be using a ticket.

(d) Subpart D contains provisions relating to the use of one or more program managers to assist us in the administration of the Ticket to Work program.

(e) Subpart E contains provisions relating to employment networks in the Ticket to Work program.

(f) Subpart F contains provisions relating to State vocational rehabilitation agencies' participation in the Ticket to Work program.

(g) Subpart G contains provisions relating to individual work plans in the Ticket to Work program.

(h) Subpart H contains provisions establishing employment network payment systems.

(i) Subpart I contains provisions that establish a procedure for resolving disputes under the Ticket to Work program.

(j) Subpart J contains provisions explaining how the implementation of the Ticket to Work program affects alternate participants under the programs for payments for vocational rehabilitation services under subpart V of part 404 and subpart V of part 416 of this chapter.

§ 411.105 What is the purpose of the Ticket to Work program?

The purpose of the Ticket to Work program is to expand the universe of service providers available to individuals who are entitled to Social Security benefits based on disability or eligible for Supplemental Security Income (SSI) benefits based on disability or blindness in obtaining the services necessary to find, enter and retain employment. Expanded employment opportunities for these individuals also will increase the likelihood that these individuals will reduce their dependency on Social Security and SSI cash benefits.

§ 411.110 How is the Ticket to Work program implemented?

We are implementing the Ticket to Work program in graduated phases at phase-in sites around the country. We are implementing the program at sites on a wide enough scale to allow for a thorough evaluation and ensure full implementation of the program on a timely basis.

§ 411.115 Definitions of terms used in this part.

As used in this part:

(a) *''The Act''* means the Social Security Act, as amended.

(b) *''Commissioner''* means the Commissioner of Social Security.

(c) *''Cost reimbursement payment system''* means the provisions for payment for vocational rehabilitation services under subpart V of part 404 and subpart V of part 416 of this chapter.

(d) *''Disabled beneficiary''* means a title II disability beneficiary or a title XVI disability beneficiary.

(e) *''Employment network'' or ''EN''* means a qualified public or private entity that has entered into an agreement with us to serve under the Ticket to Work program and that assumes responsibility for the coordination and delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries assigning tickets to it. The rules on employment networks are described in subpart E of this part (§§ 411.300–411.330). A State vocational rehabilitation agency may choose, on a case-by-case basis, to function as an employment network with respect to a beneficiary under the Ticket to Work program. The rules on State vocational rehabilitation agencies' participation in the Ticket to Work program are described in subpart F of this part (§§ 411.350–411.435).

(f) *''Employment plan''* means an individual work plan described in paragraph (i) of this section, or an individualized plan for employment described in paragraph (j) of this section. When used in subpart J of this part, ''employment plan'' also means a ''similar document'' referred to in §§ 404.2114(a)(2) and 416.2214(a)(2) of this chapter under which an alternate participant under the programs for payments for vocational rehabilitation services (described in subpart V of part 404 and subpart V of part 416 of this chapter) provides services to a disabled beneficiary under those programs.

(g) *''Federal SSI cash benefits''* means a ''Supplemental Security Income benefit under title XVI'' based on blindness or disability as described in paragraphs (n) and (r) of this section.

(h) *''I'', ''my'', ''you'',* or *''your''* means the disabled beneficiary.

(i) *''Individual work plan'' or ''IWP''* means an employment plan under which an employment network (other than a State vocational rehabilitation agency) provides services to a disabled beneficiary under the Ticket to Work program. An individual work plan must be developed under, and meet the requirements of, the rules in subpart G of this part (§§ 411.450–411.470).

(j) *''Individualized plan for employment'' or ''IPE''* means an employment plan under which a State vocational rehabilitation agency provides services to individuals with disabilities (including beneficiaries assigning tickets to it under the Ticket to Work program) under a State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*). An individualized plan for employment must be developed under, and meet the requirements of, 34 CFR 361.45 and 361.46.

(k) *''Program manager'' or ''PM''* means an organization in the private or public sector that has entered into a contract with us to assist us in administering the Ticket to Work program. The rules on the use of one or more program managers to assist us in administering the program are described in subpart D of this part (§§ 411.230–411.250).

(l) *''Social Security disability benefits''* means the benefits described in paragraph (q) of this section.

(m) *''State vocational rehabilitation agency''* or *''State VR agency''* means a State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*). In those States that have one agency that provides VR services to non-blind individuals and another agency that provides services to blind individuals, this term refers to either State agency.

(n) *''Supplemental Security Income benefit under title XVI''* means a cash benefit under section 1611 or 1619(a) of the Act, and does not include a State supplementary payment, administered Federally or otherwise.

(o) *''Ticket''* means a document described in § 411.120 which the Commissioner may issue to disabled beneficiaries for participation in the Ticket to Work program.

(p) *''Ticket to Work program''* or *''program''* means the Ticket to Work and Self-Sufficiency Program under section 1148 of the Act.

(q) *''Title II disability beneficiary''* means an individual entitled to disability insurance benefits under section 223 or to monthly insurance benefits under section 202 of the Act based on such individual's disability as defined in section 223(d) of the Act. (See § 404.1505 of this chapter.) An individual is a title II disability beneficiary for each month for which such individual is entitled to such benefits.

(r) *''Title XVI disability beneficiary''* means an individual eligible for Supplemental Security Income benefits under title XVI on the basis of blindness (within the meaning of section 1614(a)(2) of the Act) (see §§ 416.981 and 416.982 of this chapter) or disability (within the meaning of section 1614(a)(3) of the Act) (see § 416.905 of this chapter). An individual is a title XVI disability beneficiary for each month for which such individual is eligible for such benefits.

(s) *''We''* or *''us''* means the Social Security Administration.

Subpart B—Tickets Under the Ticket to Work Program

§ 411.120 What is a ticket under the Ticket to Work program?

(a) A ticket under the Ticket to Work program is a document which provides evidence of the Commissioner's agreement to pay, under the rules in subpart H of this part, an employment network (EN) or a State VR agency to which a disabled beneficiary's ticket is assigned, for providing employment services, vocational rehabilitation services, and other support services to the beneficiary.

(b) The ticket is a red, white and blue document approximately 6″ by 9″ in size. The left side of the document includes the beneficiary's name, ticket number, claim account number and the date we issued the ticket. The ticket number is 12 characters and comprises the beneficiary's own social security number, the letters ''TW'' and a number 1, 2, etc. A number 1 in the last position would signify that this is the first ticket the beneficiary has received, consistent with § 411.125(b).

(c) The right side of the ticket includes the signature of the Commissioner of Social Security, and the following language:

> This ticket is issued to you by the Social Security Administration under the Ticket to Work and Self-Sufficiency Program. If you want help in returning to work or going to work for the first time, you may offer this ticket to an Employment Network of your choosing or take it to your State vocational rehabilitation agency for services. If you choose an Employment Network and it agrees to take your ticket, or if you choose your State agency and you qualify for services, these providers can offer you the services you may need to go to work.
>
> An Employment Network provides the services at no cost to you. The Social Security Administration will pay the Employment Network if you assign your ticket to it, and the Employment Network helps you to go to work and complies with other requirements of the Program. An Employment Network serving under the Program has agreed to abide by the rules and regulations of the Program under the terms of its agreement with the Social Security Administration for providing services under the Program. Your State agency can tell you about its rules for getting services.

§ 411.125 Who is eligible to receive a ticket under the Ticket to Work program?

(a) You will be eligible to receive a Ticket to Work in a month in which—

(1) You are age 18 or older and have not attained age 65;

(2)(i)(A) You are a title II disability beneficiary (other than a beneficiary receiving benefit payments under § 404.316(c), § 404.337(c), § 404.352(d), or § 404.1597a of this chapter); and

(B) You are in current pay status for monthly title II cash benefits based on disability (see subpart E of part 404 of this chapter for our rules on nonpayment of title II benefits); or

(ii)(A) You are a title XVI disability beneficiary (other than a beneficiary receiving disability or blindness benefit payments under § 416.996 or § 416.1338 of this chapter);

(B) If you are an individual described in § 416.987(a)(1) of this chapter, you are eligible for benefits under title XVI based on disability under the standard for evaluating disability for adults following a redetermination of your eligibility under § 416.987 of this chapter; and

(C) Your monthly Federal cash benefits based on disability or blindness under title XVI are not suspended (see

subpart M of part 416 of this chapter for our rules on suspension of title XVI benefit payments); and

(3) Our records show that—

(i) Your case is not designated as a medical improvement expected diary review case (see §§ 404.1590 and 416.990 of this chapter for what we mean by a medical improvement expected diary review); or

(ii) Your case is designated as a medical improvement expected diary review case, and we have conducted at least one continuing disability review in your case and made a final determination or decision that your disability continues (see subpart J of part 404 or subpart N of part 416 of this chapter for when a determination or decision becomes final).

(b) You will not be eligible to receive more than one ticket during any period during which you are either—

(1) Entitled to title II benefits based on disability (see §§ 404.316(b), 404.337(b) and 404.352(b) of this chapter for when entitlement to title II disability benefits ends); or

(2) Eligible for title XVI benefits based on disability or blindness and your eligibility has not terminated (see subpart M of part 416 of this chapter for our rules on when eligibility for title XVI benefits terminates).

(c) If your entitlement to title II benefits based on disability ends and/or your eligibility for title XVI benefits based on disability or blindness terminates as described in § 411.155(b)(1) or (2), you will be eligible to receive a new ticket in a month in which—

(1) Your entitlement to title II benefits based on disability is reinstated under section 223(i) of the Act, or your eligibility for title XVI benefits based on disability or blindness is reinstated under section 1631(p) of the Act; and

(2) You meet the requirements of paragraphs (a)(1) and (2) of this section.

§ 411.130 How will SSA distribute tickets under the Ticket to Work program?

(a) We will distribute tickets in graduated phases at phase-in sites selected by the Commissioner, to permit a thorough evaluation of the Ticket to Work program and ensure that the most effective methods are in place for full implementation of the program. (See § 411.110.)

(b) We will distribute a ticket to you when we distribute tickets in your State, if you are eligible to receive a ticket under § 411.125.

§ 411.135 What do I do when I receive a ticket?

Your participation in the Ticket to Work program is voluntary. When you receive your ticket, you are free to choose when and whether to assign it (see § 411.140 for information on assigning your ticket). If you want to participate in the program, you can take your ticket to any EN you choose or to your State VR agency.

§ 411.140 When can I assign my ticket and how?

(a) You may assign your ticket only during a month in which you meet the requirements of § 411.125(a)(1) and (a)(2). You may assign your ticket to any EN which is serving under the program and is willing to provide you with services, or you may assign your ticket to a State VR agency if you are eligible to receive VR services according to 34 CFR 361.42. You may not assign your ticket to more than one provider of services (i.e. an EN or a State VR agency) at a time. Once you have assigned your ticket to an EN or State VR agency, you may take your ticket out of assignment for any reason under the rules in § 411.145(a). Also, you may reassign your ticket under the rules in § 411.150.

(b)(1) In determining which EN you want to work with, you may discuss your rehabilitation and employment plans with as many ENs in your area as you wish. You also may discuss your rehabilitation and employment plans with the State VR agency.

(2) You can obtain a list of the approved ENs in your area from the program manager (PM) we have enlisted to assist in the administration of the Ticket to Work program. (See § 411.115(k) for a definition of the PM.)

(c) If you choose to work with an EN serving under the program, both you and the EN of your choice need to agree upon an individual work plan (IWP) (see § 411.115(i) for a definition of an IWP). If you choose to work with a State VR agency, you must develop an individualized plan for employment (IPE) and your State VR counselor must agree to the terms of the IPE, according to the requirements established in 34 CFR 361.45 and 361.46. (See § 411.115(j) for a definition of an IPE.) The IWP or IPE outlines the services necessary to assist you in achieving your chosen employment goal.

(d) In order for you to assign your ticket to an EN or State VR agency, all of the following requirements must be met:

(1)(i) If you decide to work with an EN, you and a representative of the EN must agree to and sign an IWP; or

(ii) If you decide to work with a State VR agency, you and a representative of the State VR agency must agree to and sign both an IPE and a form that provides the information described in § 411.385(a)(1), (2) and (3).

(2) You must be eligible to assign your ticket under the rules in paragraph (a) of this section.

(3) A representative of the EN must submit a copy of the signed IWP to the PM or a representative of the State VR agency must submit the completed and signed form (as described in § 411.385(a) and (b)) to the PM.

(4) The PM must receive the copy of the IWP or receive the required form, as appropriate.

(e) If all of the requirements in paragraph (d) of this section are met, we will consider your ticket assigned to the EN or State VR agency. The effective date of the assignment of your ticket will be the first day on which the requirements of paragraphs (d)(1) and (2) of this section are met. See §§ 411.160 through 411.225 for an explanation of how assigning your ticket may affect medical reviews that we conduct to determine if you are still disabled under our rules.

§ 411.145 Once my ticket has been assigned to an EN or State VR agency, can it be taken out of assignment?

(a) If you assigned your ticket to an EN or a State VR agency, you may take your ticket out of assignment for any reason. You must notify the PM in writing that you wish to take your ticket out of assignment. The ticket will be no longer assigned to that EN or State VR agency effective with the first day of the month following the month in which you notify the PM in writing that you wish to take your ticket out of assignment. You may reassign your ticket under the rules in § 411.150.

(b) If your EN goes out of business or is no longer approved to participate as an EN in the Ticket to Work program, the PM will take your ticket out of assignment with that EN. The ticket will be no longer assigned to that EN effective on the first day of the month following the month in which the EN goes out of business or is no longer approved to participate in the Ticket to Work program. You will be sent a notice informing you that your ticket is no longer assigned to that EN. In addition, if your EN is no longer willing or able to provide you with services, or if your State VR agency stops providing services to you because you have been determined to be ineligible for VR services under 34 CFR 361.42, the EN or State VR agency may ask the PM to take your ticket out of assignment with that EN or State VR agency. The ticket will be no longer assigned to that EN or State VR agency effective on the first day of the month following the month in

which the EN or State VR agency makes a request to the PM that the ticket be taken out of assignment. You will be sent a notice informing you that your ticket is no longer assigned to that EN or State VR agency. You may reassign your ticket under the rules in § 411.150.

(c) For information about how taking a ticket out of assignment may affect medical reviews that we conduct to determine if you are still disabled under our rules, see §§ 411.171(c) and 411.220.

§ 411.150 Can I reassign my ticket to a different EN or the State VR agency?

(a) Yes. If you previously assigned your ticket and your ticket is no longer assigned (see § 411.145) or you wish to change the assignment, you may reassign your ticket, unless you are receiving benefit payments under § 404.316(c), § 404.337(c), § 404.352(d) or § 404.1597a of this chapter, or you are receiving disability or blindness benefit payments under § 416.996 or § 416.1338 of this chapter (the provisions of paragraph (b)(3) of this section notwithstanding). If you previously assigned your ticket to an EN, you may reassign your ticket to a different EN which is serving under the program and is willing to provide you with services, or you may reassign your ticket to the State VR agency if you are eligible to receive VR services according to 34 CFR 361.42. If you previously assigned your ticket to the State VR agency, you may reassign your ticket to an EN which is serving under the program and is willing to provide you with services or to another State VR agency if you are eligible to receive services according to 34 CFR 361.42.

(b) In order for you to reassign your ticket to an EN or State VR agency, all of the following requirements must be met:

(1) Your ticket must be unassigned. If your ticket is assigned to an EN or a State VR agency, you must first tell the PM in writing that you want to take your ticket out of assignment (see § 411.145).

(2)(i) You and a representative of the new EN must agree to and sign a new IWP; or

(ii) If you wish to reassign your ticket to a State VR agency, you and a representative of the State VR agency must agree to and sign both an IPE and a form that provides the information described in § 411.385(a)(1), (2) and (3).

(3) You must meet the requirements of § 411.125(a)(1) and (2) on or after the day you and a representative of the new EN sign your IWP or you and a representative of the State VR agency sign your IPE and the required form, except if—

(i) Your ticket is not in use (see § 411.170 *et seq.*) and the requirements of paragraph (b)(2) of this section are met within 30 days of the effective date your ticket no longer was assigned to the previous EN or State VR agency (see § 411.145); or

(ii) Your ticket is in use (see § 411.170 *et seq.*) and the requirements of paragraph (b)(2) of this section are met before the end of the 3-month extension period described in § 411.220.

(4) A representative of the EN must submit a copy of the signed IWP to the PM or a representative of the State VR agency must submit the completed and signed form (as described in § 411.385(a) and (b)) to the PM.

(5) The PM must receive the copy of the IWP or received the required form, as appropriate.

(c) If all of the requirements in paragraphs (a) and (b) of this section are met, we will consider your ticket reassigned to the new EN or State VR agency. The effective date of the reassignment of your ticket will be the first day on which the requirements of paragraphs (a) and (b)(1), (2) and (3) of this section are met. See §§ 411.160 through 411.225 for an explanation of how reassigning your ticket may affect medical reviews that we conduct to determine if you are still disabled under our rules.

§ 411.155 When does my ticket terminate?

(a) Your ticket will terminate if and when you are no longer eligible to participate in the Ticket to Work program. If your ticket terminates, you may not assign or reassign it to an EN or State VR agency. We will not pay an EN (including a State VR agency) for milestones or outcomes achieved in or after the month in which your ticket terminates (see § 411.525(c)). Your eligibility to participate in the Ticket to Work program will end, and your ticket will terminate, in the earliest of the following months:

(1) The month in which your entitlement to title II benefits based on disability ends for reasons other than your work activity or earnings, or the month in which your eligibility for benefits under title XVI based on disability or blindness terminates for reasons other than your work activity or earnings, whichever is later;

(2) If you are entitled to widow's or widower's insurance benefits based on disability (see §§ 404.335 and 404.336 of this chapter), the month in which you attain age 65; or

(3) If you are eligible for benefits under title XVI based on disability or blindness, the month following the month in which you attain age 65.

(b) The rules in paragraph (c) of this section apply in determining when your eligibility to participate in the Ticket to Work program will end and your ticket will terminate if—

(1) You were not a concurrent title II/title XVI disability beneficiary, and your entitlement to title II benefits based on disability ends or your eligibility for title XVI benefits based on disability or blindness terminates because of your work activity or earnings; or

(2) You were a concurrent title II/title XVI disability beneficiary and—

(i) Your entitlement to title II benefits based on disability ends because of work activity or earnings and your eligibility for title XVI benefits based on disability or blindness terminates for any reason; or

(ii) Your eligibility for title XVI benefits based on disability or blindness terminates because of your work activity or earnings and your entitlement to title II benefits based on disability ends for any reason.

(c) For purposes of paragraph (b) of this section, the ticket which you received in connection with the previous period during which you were either entitled to title II benefits based on disability or eligible for title XVI benefits based on disability or blindness (as described in § 411.125(b)) will terminate, and your eligibility to participate in the Ticket to Work program based on that ticket will end, in the earliest of the following months:

(1) If we make a final determination or decision that you are not entitled to have title II benefits based on disability reinstated under section 223(i) of the Act or eligible to have title XVI benefits based on disability or blindness reinstated under section 1631(p) of the Act, the month in which we make that determination or decision;

(2) If we make a final determination or decision that you are not entitled to title II benefits based on disability or eligible for title XVI benefits based on disability or blindness after you file an application for benefits, the month in which we make that determination or decision;

(3) The month you attain retirement age (as defined in section 216(l) of the Act);

(4) The month in which you die;

(5) The month in which you become entitled to a title II benefit that is not based on disability or eligible for a title XVI benefit that is not based on disability or blindness;

(6) The month in which you again become entitled to title II benefits based on disability, or eligible for title XVI benefits based on disability or

blindness, based on the filing of an application for such benefits; or

(7) If your entitlement to title II benefits based on disability is reinstated under section 223(i) of the Act, or your eligibility for title XVI benefits based on disability or blindness is reinstated under section 1631(p) of the Act, the month in which you are eligible to receive a new ticket under § 411.125(c).

Subpart C—Suspension of Continuing Disability Reviews for Beneficiaries Who Are Using a Ticket

Introduction

§ 411.160 What does this subpart do?

(a) This subpart explains our rules about continuing disability reviews for disability beneficiaries who are participating in the Ticket to Work program.

(b) Continuing disability reviews are reviews that we conduct to determine if you are still disabled under our rules (see §§ 404.1589, 416.989 and 416.989a of this chapter for the rules on when we may conduct continuing disability reviews). For the purposes of this subpart, continuing disability reviews include the medical reviews we conduct to determine if your medical condition has improved (see §§ 404.1594 and 416.994 of this chapter), but not any review to determine if your disability has ended under § 404.1594(d)(5) of this chapter because you have demonstrated your ability to engage in substantial gainful activity (SGA), as defined in §§ 404.1571–404.1576 of this chapter.

§ 411.165 How does being in the Ticket to Work program affect my continuing disability reviews?

We periodically review your case to determine if you are still disabled under our rules. However, if you are in the Ticket to Work program, we will not begin a continuing disability review during the period in which you are using a ticket. Sections 411.170 and 411.171 describe when the period of using a ticket begins and ends. You must meet certain requirements for us to consider you to be using a ticket.

§ 411.166 Glossary of terms used in this subpart.

(a) *Active participation in your employment plan* means you are engaging in activities outlined in your employment plan on a regular basis and in the approximate time frames specified in the employment plan.

(b) *Extension period* is a period of up to three months during which you may reassign a ticket without being subject to continuing disability reviews. You may be eligible for an extension period if the ticket is in use and no longer assigned to an Employment Network (EN) or State VR agency (see § 411.220).

(c) *Inactive status* is a status in which you may place your ticket if you are temporarily unable to participate or not actively participating in your employment plan. You may place a ticket in inactive status only during the initial 24-month period. Months during which your ticket is in inactive status do not count toward the time limitations for making timely progress toward self-supporting employment. You may keep your ticket in inactive status as long as you choose. However, because the ticket is not in use during months in which it is in inactive status, you will be subject to continuing disability reviews during these months.

(d) *Initial 24-month period* means the 24-month period that begins with the month following the month in which you first assigned your ticket. We do not count any month in which the ticket is not assigned to an EN or State VR agency, as described in § 411.145, or any month during which the ticket is not in use because it is in inactive status (see § 411.190(a)(2)) or because you were determined to be no longer making timely progress toward self-supporting employment under § 411.190(a)(3) or § 411.205.

(e) *Progress review* means the reviews the program manager (PM) conducts to determine if you are meeting the timely progress guidelines described in these regulations. (See § 411.115(k) for a definition of the PM.) The method for conducting the 24-month progress review is explained in § 411.195 and the method for conducting 12-month progress reviews is explained in § 411.200.

(f) *Timely progress guidelines* means the guidelines we use to determine if you are making timely progress toward self-supporting employment. In general, we determine if you are making timely progress toward self-supporting employment using two distinct criteria with defined time frames. These criteria are active participation in your employment plan during the initial 24-month period and increased work and earnings during subsequent 12-month progress review periods (see § 411.180 to § 411.190, § 411.195 and § 411.200).

(g) *12-month progress review period* means the 12-month period that begins either following the end of the initial 24-month period or following the previous 12-month progress review period. We do not count any month during which your ticket is not assigned to an EN or State VR agency, as described in § 411.145.

(h) *Using a ticket* means that you have assigned a ticket to an EN or State VR agency and are making timely progress toward self-supporting employment. (See § 411.171 for a discussion of when the period of using a ticket ends.)

Definition of Using a Ticket

§ 411.170 When does the period of using a ticket begin?

The period of using a ticket begins on the effective date of the assignment of your ticket to an EN or State VR agency under § 411.140.

Note: If your period of using a ticket ends because you have previously failed to meet the timely progress guidelines under §§ 411.180 through 411.190, the period of using a ticket will resume if you satisfy the requirements for re-entering in-use status. (See § 411.210.)

§ 411.171 When does the period of using a ticket end?

The period of using a ticket ends with the earliest of the following—

(a) The month before the month in which the ticket terminates as a result of one of the events listed in § 411.155;

(b) The day before the effective date of a decision under § 411.190; § 411.195, § 411.200, or § 411.205 that you are no longer making timely progress toward self-supporting employment;

(c) The close of the three-month extension period which begins with the first month in which your ticket is no longer assigned to an EN or State VR agency (see § 411.145), unless you reassign your ticket within the three-month extension period (see § 411.220 for an explanation of the three-month extension period);

(d) The 60th month for which an outcome payment is made to your EN (including a State VR agency) under subpart H of this part; or

(e) If you have assigned your ticket to a State VR agency which selects the cost reimbursement payment system, the 60th month for which an outcome payment would have been made had the State VR agency chosen to serve you as an EN.

§ 411.175 What if I assign my ticket after a continuing disability review has begun?

(a) If we begin a continuing disability review before the date on which you assign a ticket, you may still assign the ticket and receive services under the Ticket to Work program. However, we will complete the continuing disability review. If in this review we determine that you are no longer disabled, in most cases you will no longer be eligible to receive benefit payments. However, if you assigned your ticket before we determined that you are no longer

disabled, in certain circumstances you may continue to receive benefit payments (see §§ 404.316(c), 404.337(c), 404.352(d), and 416.1338 of this chapter). If you appeal the decision that you are no longer disabled, you may also choose to have your benefits continued pending reconsideration and/or a hearing before an administrative law judge on the cessation determination (see §§ 404.1597a and 416.996 of this chapter).

(b) The date on which we begin the continuing disability review is the date on the notice we send you that tells you that we are beginning to review your disability case.

Guidelines for Timely Progress Toward Self-Supporting Employment

§ 411.180 What is timely progress toward self-supporting employment?

(a) *General.* The purpose of the Ticket to Work program is to provide you with the services and supports you need to work and reduce or eliminate your dependence on Social Security disability benefits and/or SSI benefits based on disability or blindness. We consider you to be making timely progress toward self-supporting employment when you show an increasing ability to work at levels which will reduce or eliminate your dependence on these benefits.

(b) *Definitions.* As used in this subpart—

(1) *Initial 24-month period* means the 24-month period that begins with the month following the month in which you first assigned your ticket. (See §§ 411.220(e) and 411.225(c) for when a new initial 24-month period may be established for you.) We do not count any month during which the ticket is not assigned to an EN or State VR agency, as described in § 411.145, or any month during which the ticket is not in use because it is in inactive status (see § 411.190(a)(2)) or because you were determined to be no longer making timely progress toward self-supporting employment under § 411.190(a)(3) or § 411.205.

(2) *12-month progress review period* means the 12-month period that begins either following the end of the initial 24-month period or following the previous 12-month progress review period. We do not count any month during which your ticket is not assigned to an EN or State VR agency, as described in § 411.145.

(c) *Guidelines.* We will determine whether you are making timely progress toward self-supporting employment by using the following guidelines:

(1) During the initial 24-month period after you assign your ticket, you must be actively participating in your employment plan. ''Actively participating in your employment plan'' means that you are engaging in activities outlined in your employment plan on a regular basis and in the approximate time frames specified in the employment plan. These activities may include employment, if agreed to in the employment plan. At the end of the initial 24-month period, you must successfully complete the 24-month progress review, as described in § 411.195. If you worked in one or more months during the initial 24-month period at the level of work applicable to the work requirement for the first 12-month progress review period, each such month of work may be used to reduce by one month the number of months of work referred to in § 411.195(a)(2) and § 411.195(a)(3) for purposes of meeting the requirements of those sections regarding a goal of three months of work during the first 12-month progress review period.

(2) During your first 12-month progress review period, you must work (as defined in § 411.185) for at least three of these 12 months. The three months do not need to be consecutive. If you worked one or more months during the initial 24-month period at the level of work applicable to the work requirement for the first 12-month progress review period, each such month of work may be used to reduce by one month the number of months of work required for the first 12-month progress review period.

(3) During your second 12-month progress review period, and in later 12-month progress review periods, you must work (as defined in § 411.185) for at least six of these 12 months. The six months do not need to be consecutive.

§ 411.185 How much do I need to earn to be considered to be working?

For the purpose of determining if you are meeting the timely progress requirements for continued ticket use, we will consider you to be working in each month in which you have earnings at the following levels:

(a) *For title II disability beneficiaries:*

(1) During your first and second 12-month progress review periods, we will consider you to be working in a month in which you have earnings from employment or self-employment at the SGA level for non-blind beneficiaries, as defined in §§ 404.1572 through 404.1576 of this chapter. For a month in which you are in a trial work period (see § 404.1592 of this chapter), or if you are statutorily blind as defined in § 404.1581 of this chapter, we will consider the following as fulfilling this requirement—

(i) Gross earnings from employment, before any deductions for impairment related work expenses under § 404.1576 of this chapter, that are more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) of this chapter; or

(ii) Net earnings from self-employment (as defined in § 416.1110(b) of this chapter), before any deductions for impairment related work expenses under § 404.1576 of this chapter, that are more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) of this chapter.

Note to paragraph (a)(1): If you worked in one or more months during the initial 24-month period at the level of work described in paragraph (a)(1) of this section, those months of work may be used to meet certain requirements of the 24-month progress review as explained in § 411.180(c)(1) and the work requirements for the first 12-month progress review period as explained in § 411.180(c)(2).

(2) During your third 12-month progress review period, and during later 12-month progress review periods, we will consider you to be working in a month for which Social Security disability benefits are not payable to you because of your work or earnings.

(b) *For title XVI beneficiaries:*

(1) During your first and second 12-month progress review periods, we will consider you to be working in a month in which you have—

(i) Gross earnings from employment, before any SSI income exclusions, that are more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) of this chapter; or

(ii) Net earnings from self-employment (as defined in § 416.1110(b) of this chapter), before any SSI income exclusions, that are more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) of this chapter.

Example to paragraph (b)(1): If you earn $750 in January 2001, but exclude $200 of this income in a Plan for Achieving Self-Support (see §§ 416.1180–416.1182 of this chapter), you would still be considered to be working in that month.

Note to paragraph (b)(1): If you worked in one or more months during the initial 24-month period at the level of work described in paragraph (b)(1) of this section, those months of work may be used to meet certain requirements of the 24-month progress review as explained in § 411.180(c)(1) and the work requirements for the first 12-month progress review period as explained in § 411.180(c)(2).

(2) During your third 12-month progress review period, and during any later 12-month progress review periods, we will consider you to be working in a month in which you have earnings from employment or self-employment that are sufficient to preclude the payment of Federal SSI cash benefits for a month.

(c) *For concurrent title II and title XVI beneficiaries:*

(1) During your first and second 12-month progress review periods, we will consider you to be working in a month in which you have earnings from employment or self-employment at the SGA level for non-blind beneficiaries as defined in §§ 404.1572 through 404.1576 of this chapter. For a month in which you are in a trial work period (see § 404.1592 of this chapter), or if you are statutorily blind as defined in § 404.1581 of this chapter, we will consider the following as fulfilling this requirement—

(i) Gross earnings from employment, before any SSI income exclusions or deductions for impairment related work expenses under § 404.1576 of this chapter, that are more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) of this chapter; or

(ii) Net earnings from self-employment (as defined in § 416.1110(b) of this chapter), before any SSI income exclusions or deductions for impairment related work expenses under § 404.1576 of this chapter, that are more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) of this chapter.

Note to paragraph (c)(1): If you worked in one or more months during the initial 24-month period at the level of work described in paragraph (c)(1) of this section, those months of work may be used to meet certain requirements of the 24-month progress review as explained in § 411.180(c)(1) and the work requirements for the first 12-month progress review period as explained in § 411.180(c)(2).

(2) During your third 12-month progress review period, and during later 12-month progress review periods, we will consider you to be working in a month in which you have earnings from employment or self-employment sufficient to preclude the payment of Social Security disability benefits and Federal SSI cash benefits for a month.

§ 411.190 How is it determined if I am meeting the timely progress guidelines?

(a) *During the initial 24-month period.*

(1) *General.* During the initial 24-month period after you assign your ticket, you must be actively participating in your employment plan, as defined in § 411.180(c)(1). Active participation in your employment plan will be presumed unless you or your EN or State VR agency tell the program manager (PM) that you are not actively participating. (See § 411.115(k) for a definition of the PM.) If you or your EN or State VR agency report to the PM that you are temporarily unable to participate or are not actively participating in your employment plan during the initial 24-month period after you assign your ticket, the PM will give you the choice of placing your ticket in inactive status or resuming active participation in your employment plan.

(2) *Inactive status.* If you choose to place the ticket in inactive status, your ticket will be placed in inactive status beginning with the first day of the month following the month in which you make your request. You are not considered to be using a ticket during months in which your ticket is in inactive status. Therefore, you will be subject to continuing disability reviews during those months. The months in which your ticket is in inactive status do not count toward the time limitations for making timely progress toward self-supporting employment. You may not place your ticket in inactive status after the initial 24-month period.

(i) To place a ticket in inactive status, you must submit a written request to the PM asking that your ticket be placed in inactive status. The request must include a statement from your EN or State VR agency that you will not be participating in your plan or receiving services from them during the period of inactive status.

(ii) If your ticket is still assigned to an EN or State VR agency, you may reactivate your ticket and return to in-use status at any time by submitting a written request to the PM. Your ticket will be reactivated beginning with the first day of the month following the month in which the PM receives your request.

(3) *Resuming active participation.* If you choose to resume active participation in your employment plan, you will be allowed three months to demonstrate this active participation to the PM. During this period, you will be considered to be making timely progress toward self-supporting employment, and these months will count toward your initial 24-month period. The PM will contact your EN or State VR agency after the three months to determine whether you have been actively participating in your employment plan during these three months. If the EN or State VR agency reports that you have been actively participating in your employment plan during these three months, you will continue to be considered to be making timely progress toward self-supporting employment. If the EN or State VR agency reports that you have not been actively participating in your employment plan during these three months, the PM will find that you are no longer making timely progress toward self-supporting employment. The PM will send a written notice of this decision to you at your last known address. The notice will explain the reasons for the decision and inform you of the right to ask us to review the decision. The decision will become effective 30 days after the date on which the PM sends the notice of the decision to you, unless you request that we review the decision under § 411.205.

(b) *After the initial 24-month period.*

(1) After the initial 24-month period, the PM will conduct progress reviews to determine if you are meeting the timely progress guidelines for continuing to be considered to be using a ticket.

(2) The PM will conduct a 24-month progress review at the end of the initial 24-month period. (See § 411.195.)

(3) If you successfully complete your 24-month progress review, the PM will then conduct 12-month progress reviews at the end of each 12-month progress review period. (See § 411.200.)

§ 411.191 Table summarizing the guidelines for timely progress toward self-supporting employment.

You may use the following table as a general guide to determine what you need to do to meet the guidelines for timely progress toward self-supporting employment. For more detail, refer to §§ 411.180–411.190, and §§ 411.195 and 411.200.

If you:	You are in this period:	You must work:	With this level of earnings:	At the end of the period we will conduct your:
(a) First assigned your ticket less than 24 months ago (not counting any months during which your ticket was unassigned or was not in use).	Initial 24-month period	No work requirement. Must be actively participating in employment plan.	Not applicable	24-month progress review.
(b) First assigned your ticket 25 to 36 months ago, not counting certain months [1].	First 12-month progress review period.	3 months out of 12 [2] ..	Earnings at the SGA level for non-blind beneficiaries; [3] or If you are an SSI-only beneficiary, gross earnings from employment or net earnings from self-employment which, before SSI income exclusions, are more than the SGA threshold amount for non-blind beneficiaries.	First 12-month progress review.
(c) First assigned your ticket 37 to 48 months ago, not counting certain months [1].	Second 12-month progress review period.	6 months out of 12	Earnings at the SGA level for non-blind beneficiaries; [2] or If you are an SSI-only beneficiary, gross earnings from employment or net earnings from self-employment which, before SSI income exclusions, are more than the SGA threshold amount for non-blind beneficiaries.	Second 12-month progress review.
(d) First assigned your ticket 49 to 60 months ago, not counting certain months [3].	Third 12-month progress review period.	6 months out of 12	Earnings sufficient to preclude Social Security disability and Federal SSI cash benefits for a month.	Third 12-month progress review.

Note to table: In later 12-month progress review periods, the work and earnings requirements are the same as in the third 12-month progress review period.

[1] In counting the 24 months which make up the initial 24-month period that begins after you assign your ticket, we do not count any months during which your ticket was unassigned or was not in use (see § 411.180(b)(1)). In counting the 12 months which make up any subsequent 12-month progress revieww period, we do not count any months during which your ticket was unassigned (see § 411.180(b)(2)).

[2] If you worked in one or more months during the initial 24-month period at the level of work applicable to the work requirement for the first 12-month progress review period, each such month of work may be used to reduce by one month the number of months of work required for the first 12-month progress review period (see § 411.180(c)(2)).

[3] For an explanation of how we determine if you meet this requirement if you are in a trial work period or if you are blind, see § 411.185(a)(1) or (c)(1).

§ 411.195 How will the PM conduct my 24-month progress review?

(a) In this review the PM will consider the following:

(1) Are you actively participating in your employment plan? By ''actively participating in your employment plan,'' we mean that you are engaging in activities outlined in your employment plan on a regular basis and in the approximate time frames specified in the plan. These activities may include employment, if agreed to in the employment plan.

(2) Does your employment plan have a goal of at least three months of work (as defined in § 411.185) by the time of your first 12-month progress review?

(3) Given your current progress in your employment plan, can you reasonably be expected to reach this goal of at least three months of work (as defined in § 411.185) at the time of your first 12-month progress review?

Note to paragraph (a): If you worked in one or more months during the initial 24-month period at the level of work applicable to the work requirement for the first 12-month progress review period, each such month of work may be used to reduce by one month the number of months of work referred to in paragraphs (a)(2) and (3) of this section and the number of months of work required for the first 12-month progress review period (see § 411.180(c)(1) and (2)).

(b) If the answer to all three of these questions is yes, the PM will find that you are making timely progress toward self-supporting employment. We will consider you to be making timely progress toward self-supporting employment until your first 12-month progress review.

(c) If the answer to any of these questions is no, the PM will find that you are not making timely progress toward self-supporting employment. The PM will send a written notice of the decision to you at your last known address. The notice will explain the reasons for the decision and inform you of the right to ask us to review the decision. The decision will be effective 30 days after the date on which the PM sends the notice of the decision to you, unless you request that we review the decision under § 411.205.

§ 411.200 How will the PM conduct my 12-month progress reviews?

(a) The 12-month progress review is a two step process:

(1) *Step one—Retrospective review.* Did you complete the work requirements (as specified in § 411.180 and § 411.185) in the just completed 12-month progress review period?

(i) If you have not completed the work requirements, the PM will find that you are not making timely progress toward self-supporting employment.

(ii) If you have completed the work requirements, the PM will go to step two.

(2) *Step two—Anticipated work level.* Do both you and your EN or State VR agency expect that you will work at the level required during the next 12-month progress review period?

(i) If not, the PM will find that you are not making timely progress toward self-supporting employment.

(ii) If so, the PM will find that you are making timely progress toward self-supporting employment. We will consider you to be making timely progress toward self-supporting employment until your next 12-month progress review.

(b) If the PM finds that you are not making timely progress toward self-supporting employment, the PM will send a written notice of the decision to you at your last known address. The notice will explain the reasons for the decision and inform you of the right to ask us to review the decision. The decision will be effective 30 days after the date on which the PM sends the notice of the decision to you, unless you request that we review the decision under § 411.205.

§ 411.205 What if I disagree with the PM's decision about whether I am making timely progress toward self-supporting employment?

If you disagree with the PM's decision, you may request that we review the decision. You must make the request before the 30th day after the date on which the PM sends the notice of its decision to you. We will consider you to be making timely progress toward self-supporting employment until we make a decision. We will send a written notice of our decision to you at your last known address. If we decide that you are no longer making timely progress toward self-supporting employment, our decision will be effective on the date on which we send the notice of the decision to you.

Failure To Make Timely Progress

§ 411.21 What happens if I do not make timely progress toward self-supporting employment?

(a) *General.* If it is determined that you are not making timely progress toward self-supporting employment, we will find that you are no longer using a ticket. If this happens, you will once again be subject to continuing disability reviews. However, you may continue participating in the Ticket to Work program. Your EN (including a State VR agency which is serving you as an EN) also may receive any milestone or outcome payments for which it is eligible under § 411.500 *et seq.* If you are working with a State VR agency which elected payment under the cost reimbursement payment system, your State VR agency may receive payment for which it is eligible under the cost reimbursement payment system (see subparts F and H of this part).

(b) *Re-entering in-use status.* If you failed to meet the timely progress guidelines for continuing to use a ticket, you may re-enter in-use status. If you believe that you meet the requirements for re-entering in-use status described in paragraph (b)(1), (b)(2), (b)(3), (b)(4) or (b)(5) of this section, you may request that you be reinstated to in-use status. You must submit a written request to the PM asking that you be reinstated to in-use status. The PM will decide whether you have satisfied the applicable requirements for re-entering in-use status. The requirements for re-entering in-use status depend on how far you progressed before you failed to meet the timely progress guidelines.

(1) *If you failed to meet the timely progress guidelines during the initial 24-month period.*

(i) If you failed to meet the timely progress guidelines during the initial 24-month period, you may re-enter in-use status by demonstrating three consecutive months of active participation in your employment plan (see § 411.166(a)).

(ii) When you have satisfied this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

(iii) After you are reinstated to in-use status, your next review will be the 24-month progress review described in § 411.195.

(2) *If you failed to meet the timely progress guidelines in your 24-month progress review.*

(i) If you failed to meet the timely progress guidelines in your 24-month progress review, you may re-enter in-use status by completing three months of work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) within a rolling 12-month period. The rolling 12-month period must begin after the effective date of the decision that you failed to meet the timely progress guidelines. You also must satisfy the test of § 411.200(a)(2) regarding the anticipated level of your work during the 12-month progress review period that may begin under paragraph (b)(2)(iii) of this section. The work requirements for this 12-month progress review period will be the work requirements applicable during the second 12-month progress review period.

(ii) When you have satisfied these requirements, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

(iii) After you are reinstated to in-use status, the second 12-month progress review period will begin. During this 12-month progress review period, you will be required to work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) at least six months. The PM will conduct a 12-month progress review at the end of this 12-month progress review period to determine if you have met this requirement. After this, the PM will conduct 12-month progress reviews in the usual manner.

(3) *If you failed to meet the timely progress guidelines in your first 12-month progress review.*

(i) If you failed to meet the timely progress guidelines in your first 12-month progress review, you may re-enter in-use status by completing three months of work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) within a rolling 12-month period. The rolling 12-month period must begin after the effective date of the decision that you failed to meet the timely progress guidelines. You also must satisfy the test of § 411.200(a)(2) regarding the anticipated level of your work during the next 12-month progress review period that may begin under paragraph (b)(3)(iii) of this section.

(ii) When you have satisfied these requirements, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

(iii) After you are reinstated to in-use status, your next 12-month progress review period will begin. During this 12-month progress review period, you will be required to work (as defined in

§ 411.185(a)(1), (b)(1) or (c)(1)) at least six months. The PM will conduct a 12-month progress review at the end of this 12-month progress review period to determine if you have met this requirement. After this, the PM will conduct 12-month progress reviews in the usual manner.

(4) *If you failed to meet the timely progress guidelines in your second 12-month progress review.*

(i) If you failed to meet the timely progress guidelines in your second 12-month progress review, you may re-enter in-use status by completing six months of work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) within a rolling 12-month period. The rolling 12-month period must begin after the effective date of the decision that you failed to meet the timely progress guidelines. You also must satisfy the test of § 411.200(a)(2) regarding the anticipated level of your work during the next 12-month progress review period that may begin under paragraph (b)(4)(iii) of this section.

(ii) When you have satisfied these requirements, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

(iii) After you are reinstated to in-use status, your next 12-month progress review period will begin. During this 12-month progress review period, you will be required to work (as defined in § 411.185(a)(2), (b)(2) or (c)(2)) at least six months. The PM will conduct a 12-month progress review at the end of this 12-month progress review period to determine if you have met this requirement. After this, the PM will conduct 12-month progress reviews in the usual manner.

(5) *If you failed to meet the timely progress guidelines in any progress review after your second 12-month progress review.*

(i) If you failed to meet the timely progress guidelines in any progress review after your second 12-month progress review, you may re-enter in-use status by completing six months of work within a rolling 12-month period with earnings in each of the six months at the level specified in § 411.185(a)(2), (b)(2) or (c)(2). The rolling 12-month period must begin after the effective date of the decision that you failed to meet the timely progress guidelines. You also must satisfy the test in § 411.200(a)(2) regarding the anticipated level of your work during the next 12-month progress review period that may begin under paragraph (b)(5)(iii) of this section.

(ii) When you have satisfied these requirements, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

(iii) After you are reinstated to in-use status, your next 12-month progress review period will begin. During this 12-month progress review period, you will be required to work at least six months with earnings at the level specified in § 411.185(a)(2), (b)(2) or (c)(2). The PM will conduct a 12-month progress review at the end of this 12-month progress review period to determine if you have met this requirement. After this, the PM will conduct 12-month progress reviews in the usual manner.

(c) *Decisions on whether you have satisfied the requirements for re-entering in-use status.*

(1) After you have submitted a written request to the PM asking that you be reinstated to in-use status, the PM will decide whether you have satisfied the applicable requirements in this section for re-entering in-use status. The PM will send a written notice of the decision to you at your last known address. The notice will explain the reasons for the decision and inform you of the right to ask us to review the decision. If the PM decides that you have satisfied the requirements for re-entering in-use status (including the requirement that your ticket be assigned to an EN or State VR agency), you will be reinstated to in-use status effective with the date on which the PM sends the notice of the decision to you. If the PM decides that you have not satisfied the requirements for re-entering in-use status, you may request that we review the decision under paragraph (c)(2) of this section.

(2) If you disagree with the PM's decision, you may request that we review the decision. You must make the request before the 30th day after the date on which the PM sends the notice of its decision to you. We will send you a written notice of our decision at your last known address. If we decide that you have satisfied the requirements for re-entering in-use status (including the requirement that your ticket be assigned to an EN or State VR agency), you will be reinstated to in-use status effective with the date on which we send the notice of the decision to you.

The Extension Period

§ 411.220 What if my ticket is no longer assigned to an EN or State VR agency?

(a) If your ticket was once assigned to an EN or State VR agency and is no longer assigned, you are eligible for an extension period of up to three months to reassign your ticket. You are eligible for an extension period if your ticket is in use and no longer assigned because—

(1) You retrieved your ticket because you were dissatisfied with the services being provided (see § 411.145(a)) or because you relocated to an area not served by your previous EN or State VR agency; or

(2) Your EN went out of business, is no longer approved to participate as an EN in the Ticket to Work program, or is no longer willing or able to provide you with services as described in § 411.145(b), or your State VR agency stopped providing services to you as described in § 411.145(b).

(b) During the extension period, the ticket will still be considered to be in use. This means that you will not be subject to continuing disability reviews during this period.

(c) Time spent in the extension period will not count toward the time limitations for the timely progress guidelines.

(d) The extension period—

(1) Begins on the first day on which the ticket is no longer assigned (see § 411.145); and

(2) Ends three months after it begins or when you assign your ticket to a new EN or State VR agency, whichever is sooner.

(e) If your extension period began during the initial 24-month period, and you reassign your ticket to an EN or State VR agency (other than the EN or State VR agency to which the ticket was previously assigned), you will have a new initial 24-month period when you reassign your ticket. This initial 24-month period will begin with the first month beginning after the day on which the reassignment of your ticket is effective under § 411.150(c).

(f) If you do not assign your ticket by the end of the extension period, the ticket will no longer be in use and you will once again be subject to continuing disability reviews.

§ 411.225 What if I reassign my ticket after the end of the extension period?

(a) *General.* You may reassign your ticket after the end of the extension period under the conditions described in § 411.150. If you reassign your ticket after the end of the extension period, you will be reinstated to in-use status beginning on the day on which the reassignment of your ticket is effective under § 411.150(c).

(b) *Time limitations for the timely progress guidelines.* Any month during which your ticket is not assigned, either during or after the extension period,

will not count toward the time limitations for the timely progress guidelines. See § 411.180(b)(1) and (2).

(c) *If your extension period began during the initial 24-month period.* If your extension period began during the initial 24-month period, and you reassign your ticket to an EN or State VR agency (other than the EN or State VR agency to which the ticket was previously assigned), you will have a new initial 24-month period when you reassign your ticket. This initial 24-month period will begin with the first month beginning after the day on which the reassignment of your ticket is effective under § 411.150(c).

(d) *If your extension period began during any 12-month progress review period.* If your extension period began during a 12-month progress review period and you reassign your ticket after the end of the extension period, the period comprising the remaining months in that 12-month progress review period (see § 411.180(b)(2)) will begin with the first month beginning after the day on which the reassignment of your ticket is effective under § 411.150(c).

Subpart D—Use of One or More Program Managers To Assist in Administration of the Ticket to Work Program

§ 411.230 What is a PM?

A program manager (PM) is an organization in the private or public sector that has entered into a contract to assist us in administering the Ticket to Work program. We will use a competitive bidding process to select one or more PMs.

§ 411.235 What qualifications are required of a PM?

A PM must have expertise and experience in the field of vocational rehabilitation or employment services.

§ 411.240 What limitations are placed on a PM?

A PM is prohibited from directly participating in the delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries with tickets in the PM's designated service delivery area. A PM is also prohibited from holding a financial interest in an employment network (EN) or service provider that provides services under the Ticket to Work program in the PM's designated service delivery area.

§ 411.245 What are a PM's responsibilities under the Ticket to Work program?

A PM will assist us in administering the Ticket to Work program by conducting the following activities:

(a) *Recruiting, recommending, and monitoring ENs.* A PM must recruit and recommend for selection by us public and private entities to function as ENs under the program. A PM is also responsible for monitoring the ENs operating in its service delivery area. Such monitoring must be done to the extent necessary and appropriate to ensure that adequate choices of services are made available to beneficiaries with tickets. A PM may not limit the number of public or private entities being recommended to function as ENs.

(b) *Facilitating access by beneficiaries to ENs.* A PM must assist beneficiaries with tickets in accessing ENs.

(1) A PM must establish and maintain lists of the ENs available to beneficiaries with tickets in its service delivery area and make these lists generally available to the public.

(2) A PM must ensure that all information provided to beneficiaries with tickets about ENs is in accessible formats. For purposes of this section, accessible format means by media that is appropriate to a particular beneficiary's impairment(s).

(3) A PM must take necessary measures to ensure that sufficient ENs are available and that each beneficiary under the Ticket to Work program has reasonable access to employment services, vocational rehabilitation services, and other support services. The PM shall ensure that services such as the following are available in each service area, including rural areas: case management, work incentives planning, supported employment, career planning, career plan development, vocational assessment, job training, placement, follow-up services, and other services that we may require in an agreement with a PM.

(4) A PM must ensure that each beneficiary with a ticket is allowed to change ENs. When a change in the EN occurs, the PM must reassign the ticket based on the choice of the beneficiary.

(c) *Facilitating payments to ENs.* A PM must facilitate payments to the ENs in its service delivery area. Subpart H explains the EN payment systems and the PM's role in administering these systems.

(1) A PM must maintain documentation and provide regular assurances to us that payments to an EN are warranted. The PM shall ensure that an EN is complying with the terms of its agreement and applicable regulations.

(2) Upon the request of an EN, the PM shall make a determination of the allocation of the outcome or milestone payments due to an EN based on the services provided by the EN when a beneficiary has been served by more than one EN.

(d) *Administrative requirements.* A PM will perform such administrative tasks as are required to assist us in administering and implementing the Ticket to Work program. Administrative tasks required for the implementation of the Program may include, but are not limited to:

(1) Reviewing individual work plans (IWPs) submitted by ENs for ticket assignment. These reviews will be conducted to ensure that the IWPs meet the requirements of § 411.465. (The PM will not review individualized plans for employment developed by State VR agencies and beneficiaries.)

(2) Reviewing amendments to IWPs to ensure that the amendments meet the requirements in § 411.465.

(3) Ensuring that ENs only refer an individual to a State VR agency for services pursuant to an agreement regarding the conditions under which such services will be provided.

(4) Resolving a dispute between an EN and a State VR agency with respect to agreements regarding the conditions under which services will be provided when an individual is referred by an EN to a State VR agency for services.

Evaluation of Program Manager Performance

§ 411.250 How will SSA evaluate a PM?

(a) We will periodically conduct a formal evaluation of the PM. The evaluation will include, but not be limited to, an assessment examining the following areas:

(1) Quality of services;

(2) Cost control;

(3) Timeliness of performance;

(4) Business relations; and

(5) Customer satisfaction.

(b) Our Project Officer will perform the evaluation. The PM will have an opportunity to comment on the evaluation, and then the Contracting Officer will determine the PM's final rating.

(c) These performance evaluations will be made part of our database on contractor past performance to which any Federal agency may have access.

(d) Failure to comply with the standards used in the evaluation may result in early termination of our agreement with the PM.

Subpart E—Employment Networks

§ 411.300 What is an EN?

An employment network (EN) is any qualified entity that has entered into an agreement with us to function as an EN under the Ticket to Work program and assume responsibility for the coordination and delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries who have assigned their tickets to that EN.

§ 411.305 Who is eligible to be an EN?

Any qualified agency or instrumentality of a State (or political subdivision thereof) or a private entity that assumes responsibility for the coordination and delivery of services under the Ticket to Work program to disabled beneficiaries is eligible to be an EN. A single entity or an association of or consortium of entities combining their resources is eligible to be an EN. The entity may provide these services directly or by entering into an agreement with other organizations or individuals to provide the appropriate services or other assistance that a beneficiary with a ticket may need to find and maintain employment that reduces dependency on disability benefits. ENs may include, but are not limited to:

(a) Any public or private entity, including charitable and religious organizations, that can provide directly, or arrange for other organizations or entities to provide, employment services, vocational rehabilitation services, or other support services.

(b) State agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*) may choose, on a case-by-case basis, to be paid as an EN under the payment systems described in subpart H of this part. For the rules on State VR agencies' participation in the Ticket to Work program, see subpart F of this part. The rules in this subpart E apply to entities other than State VR agencies.

(c) One-stop delivery systems established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2841 *et seq.*).

(d) Alternate participants currently operating under the authority of section 222(d)(2) of the Social Security Act.

(e) Organizations administering Vocational Rehabilitation Services Projects for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750 *et seq.*).

(f) Public or private schools that provide VR or employment services, conduct job training programs, or make services or programs available that can assist students with disabilities in acquiring specific job skills that lead to employment. This includes transition programs that can help students acquire work skills.

(g) Employers that offer job training or other support services or assistance to help individuals with disabilities obtain and retain employment or arrange for individuals with disabilities to receive relevant services or assistance.

§ 411.310 How does an entity other than a State VR agency apply to be an EN and who will determine whether an entity qualifies as an EN?

(a) An entity other than a State VR agency applies by responding to our Request for Proposal (RFP), which we published in the Commerce Business Daily and which is available online through the Federal government's electronic posting system (*http://www.eps.gov*). This RFP also is available through SSA's website, *http://www.ssa.gov/work.* Since recruitment of ENs will be an ongoing process, the RFP is open and continuous. The entity must respond in a format prescribed in the RFP announcement. In its response, the entity must assure SSA that it is qualified to provide employment services, vocational rehabilitation services, or other support services to disabled beneficiaries, either directly or through arrangements with other entities.

(b) The PM will solicit service providers and other qualified entities to respond to the RFP on an ongoing basis. (See § 411.115(k) for a definition of the PM.) The PM will conduct a preliminary review of responses to the RFP from applicants located in the PM's service delivery area and make recommendations to the Commissioner regarding selection. The Commissioner will decide which applicants will be approved to serve as ENs under the program.

(c) State VR agencies must comply with the requirements in subpart F of this part to participate as an EN in the Ticket to Work program. (See §§ 411.360ff).

§ 411.315 What are the minimum qualifications necessary to be an EN?

To serve as an EN under the Ticket to Work program, an entity must meet and maintain compliance with both general selection criteria and specific selection criteria.

(a) The general criteria include:

(1) having systems in place to protect the confidentiality of personal information about beneficiaries seeking or receiving services;

(2) being accessible, both physically and programmatically, to beneficiaries seeking or receiving services (examples of being programmatically accessible include the capability of making documents and literature available in alternate media including Braille, recorded formats, enlarged print, and electronic media; and insuring that data systems available to clients are fully accessible for independent use by persons with disabilities);

(3) not discriminating in the provision of services based on a beneficiary's age, gender, race, color, creed, or national origin;

(4) having adequate resources to perform the activities required under the agreement with us or the ability to obtain them;

(5) complying with the terms and conditions in the agreement with us, including delivering or coordinating the delivery of employment services, vocational rehabilitation services, and other support services; and

(6) implementing accounting procedures and control operations necessary to carry out the Ticket to Work program.

(b) The specific criteria that an entity must meet to qualify as an EN include:

(1)(i) Using staff who are qualified under applicable certification, licensing, or registration standards that apply to their profession including certification or accreditation by national accrediting or certifying organizations; or

(ii) Using staff that are otherwise qualified based on education or experience, such as by using staff with experience or a college degree in a field related to the services the EN wants to provide, such as vocational counseling, human relations, teaching, or psychology; and

(2) Taking reasonable steps to assure that if any medical and related health services are provided, such medical and health related services are provided under the formal supervision of persons licensed to prescribe or supervise the provision of these services in the State in which the services are performed.

(c) Any entity must have applicable certificates, licenses or other credentials if such documentation is required by State law to provide vocational rehabilitation services, employment services or other support services.

(d) We will not use the following as an EN:

(1) any entity that has had its license, accreditation, certification, or registration suspended or revoked for reasons concerning professional

competence or conduct or financial integrity;

(2) any entity that has surrendered a license, accreditation, certification, or registration with a disciplinary proceeding pending; or

(3) any entity that is precluded from Federal procurement or non-procurement programs.

§ 411.320 What are an EN's responsibilities as a participant in the Ticket to Work program?

An EN must—

(a) Enter into an agreement with us.

(b) Serve a prescribed service area. The EN must designate the geographic area in which it will provide services. This will be designated in the EN's agreement with us.

(c) Provide services directly, or enter into agreements with other entities to provide employment services, vocational rehabilitation services, or other support services to beneficiaries with tickets.

(d) Ensure that employment services, vocational rehabilitation services, and other support services provided under the Ticket to Work program are provided under appropriate individual work plans (IWPs).

(e) Elect a payment system at the time of signing an agreement with us (see § 411.505).

(f) Develop and implement each IWP in partnership with each beneficiary receiving services in a manner that affords the beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that employment goal. Each IWP must meet the requirements described in § 411.465.

§ 411.321 Under what conditions will SSA terminate an agreement with an EN due to inadequate performance?

We will terminate our agreement with an EN if it does not comply with the requirements under §§ 411.320, § 411.325, or the conditions in the agreement between SSA and the EN, including minimum performance standards relating to beneficiaries achieving self-supporting employment and leaving the benefit rolls.

§ 411.325 What reporting requirements are placed on an EN as a participant in the Ticket to Work program?

An EN must:

(a) Report to the PM each time it accepts a ticket for assignment;

(b) Submit a copy of each signed IWP to the PM;

(c) Submit to the PM copies of amendments to a beneficiary's IWP;

(d) Submit to the PM a copy of any agreement the EN has established with a State VR agency regarding the conditions under which the State VR agency will provide services to beneficiaries who are referred by the EN under the Ticket to Work program;

(e) Submit information to assist the PM conducting the reviews necessary to assess a beneficiary's timely progress towards self-supporting employment to determine if a beneficiary is using a ticket for purposes of suspending continuing disability reviews (see subpart C of this part);

(f) Report to the PM the specific outcomes achieved with respect to specific services the EN provided or secured on behalf of beneficiaries whose tickets it accepted for assignment. Such reports shall conform to a national model prescribed by us and shall be submitted to the PM at least annually;

(g) Provide a copy of its most recent annual report on outcomes to each beneficiary considering assigning a ticket to it and assure that a copy of its most recent report is available to the public while ensuring that personal information on beneficiaries is kept confidential;

(h) Meet our financial reporting requirements. These requirements will be described in the agreements between ENs and the Commissioner, and will include submitting a financial report to the program manager on an annual basis;

(i) Collect and record such data as we shall require, in a form prescribed by us; and

(j) Adhere to all requirements specified in the agreement with the Commissioner and all regulatory requirements in this part 411.

§ 411.330 How will SSA evaluate an EN's performance?

(a) We will periodically review the results of the work of each EN to ensure effective quality assurance in the provision of services by ENs.

(b) In conducting such a review, we will solicit and consider the views of the individuals the EN serves and the PM which monitors the EN.

(c) ENs must make the results of these periodic reviews available to disabled beneficiaries to assist them in choosing among available ENs.

Subpart F—State Vocational Rehabilitation Agencies' Participation

Participation in the Ticket to Work Program

§ 411.350 Must a State VR agency participate in the Ticket to Work program?

Yes. Each State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), must participate in the Ticket to Work program if it wishes to receive payments from SSA for serving disabled beneficiaries who are issued a ticket.

§ 411.355 What payment options does a State VR agency have under the Ticket to Work program?

(a) The Ticket to Work program provides different payment options that are available to a State VR agency for providing services to disabled beneficiaries who have a ticket. A State VR agency participates in the program in one of two ways when providing services to a particular disabled beneficiary under the program. On a case-by-case basis, subject to the limitations in § 411.585, the State VR agency may participate either—

(1) As an employment network (EN); or

(2) Under the cost reimbursement payment system (see subpart V of part 404 and subpart V of part 416 of this chapter).

(b) When the State VR agency serves a beneficiary with a ticket as an EN, the State VR agency will use the EN payment system it has elected for this purpose, either the outcome payment system or the outcome-milestone payment system (described in subpart H of this part). The State VR agency will have periodic opportunities to change the payment system it uses when serving as an EN.

(c) The State VR agency may seek payment only under its elected EN payment system whenever it serves as an EN. When serving a beneficiary who was not issued a ticket, the State VR agency may seek payment only under the cost reimbursement payment system.

(d) A State VR agency can choose to function as an EN or to receive payment under the cost reimbursement payment system each time that a ticket is assigned or reassigned to it if payment has not previously been made with respect to that ticket. If payment has previously been made with respect to that ticket, the State VR agency can receive payment only under the payment system under which the earlier payment was made.

§ 411.360 How does a State VR agency become an EN?

(a) As the Ticket to Work program is implemented in States, we will notify the State VR agency by letter about payment systems available under the program. The letter will ask the State VR agency to choose a payment system to use when it functions as an EN.

(b) When serving a beneficiary holding a ticket, the State VR agency may choose, on a case-by-case basis, to seek payment under its elected EN payment system or under the cost reimbursement payment system, subject to the limitations in § 411.585.

§ 411.365 How does a State VR agency notify SSA about its choice of a payment system for use when functioning as an EN?

(a) When the State VR agency receives our letter described in § 411.360(a) regarding implementation of the Ticket to Work program, the State VR agency must respond by sending us a letter telling us which EN payment system it will use when it functions as an EN with respect to a beneficiary who has a ticket.

(b) The director of the State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), or the director's designee must sign the State VR agency's letter described in paragraph (a) of this section.

§ 411.370 Does a State VR agency ever have to function as an EN?

A State VR agency does not have to function as an EN when serving a beneficiary with a ticket if the ticket has not previously been assigned to an EN or State VR agency or, if it has been previously assigned, we have not made payment under an EN payment system with respect to that ticket. However, as described in § 411.585(b), a State VR agency is precluded from being paid under the cost reimbursement payment system if an EN or a State VR agency serving a beneficiary as an EN has been paid by us under one of the EN payment systems with respect to the same ticket.

§ 411.375 Does a State VR agency continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), when functioning as an EN?

Yes. The State VR agency must continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), even when functioning as an EN.

Ticket Status

§ 411.380 What does a State VR agency do if the State VR agency wants to determine whether a person seeking services has a ticket?

A State VR agency can contact the Program Manager (PM) to determine if a person seeking VR services has a ticket and, if so, whether the ticket may be assigned to the State VR agency (see § 411.140) or reassigned to the State VR agency (see § 411.150). (See § 411.115(k) for a definition of the PM.)

§ 411.385 What does a State VR agency do if a beneficiary who is eligible for VR services has a ticket that is available for assignment or reassignment?

(a) Once the State VR agency determines that a beneficiary is eligible for VR services, the beneficiary and a representative of the State VR agency must agree to and sign the individualized plan for employment (IPE) required under section 102(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 722(b)). This requirement must be met in order for a beneficiary to assign or reassign his or her ticket to the State VR agency. Section 411.140(d) describes the other requirements which must be met in order for a beneficiary to assign a ticket. Section 411.150(a) and (b) describe the other requirements which must be met in order for a beneficiary to reassign a ticket. Under § 411.140(d)(3) and § 411.150(b)(4), the State VR agency must submit the following information to the PM in order for the beneficiary's ticket to be assigned or reassigned to the State VR AGENCY:

(1) A statement that the beneficiary has decided to assign or reassign the ticket to the State VR agency and that an IPE has been agreed to and signed by both the beneficiary and a representative of the State VR agency;

(2) A statement of the vocational goal outlined in the beneficiary's IPE; and

(3) A statement of the State VR agency's selection of the payment system (either the cost reimbursement payment system or the previously elected EN payment system) under which the State VR agency will seek payment for providing services to the beneficiary.

(b) This information must be submitted to the PM in a format prescribed by us and must include the signatures of both the beneficiary, or a representative of the beneficiary, and a representative of the State VR agency.

§ 411.390 What does a State VR agency do if a beneficiary to whom it is already providing services has a ticket that is available for assignment?

If a beneficiary who is receiving services from the State VR agency under an existing IPE becomes eligible for a ticket that is available for assignment and decides to assign the ticket to the State VR agency, the State VR agency must submit the information required in § 411.385(a)(1)–(3) and (b) to the PM. This requirement must be met in order for the beneficiary to assign his or her ticket to the State VR agency. Section 411.140(d) describes the other requirements which must be met in order for a beneficiary to assign a ticket.

§ 411.395 Is a State VR agency required to provide periodic reports?

(a) For cases where a State VR agency provided services functioning as an EN, the State VR agency will be required to prepare periodic reports on the specific outcomes achieved with respect to the specific services the State VR agency provided to or secured for disabled beneficiaries whose tickets it accepted for assignment. These reports must be submitted to the PM at least annually.

(b) Regardless of the payment method selected, a State VR agency must submit information to assist the PM conducting the reviews necessary to assess a beneficiary's timely progress toward self-supporting employment to determine if a beneficiary is using a ticket for purposes of suspending continuing disability reviews (see §§ 411.190, 411.195 and 411.200).

Referrals by Employment Networks to State VR Agencies

§ 411.400 Can an EN to which a beneficiary's ticket is assigned refer the beneficiary to a State VR agency for services?

Yes. An EN may refer a beneficiary it is serving under the Ticket to Work program to a State VR agency for services. However, a referral can be made only if the State VR agency and the EN have an agreement that specifies the conditions under which services will be provided by the State VR agency. This agreement must be in writing and signed by the State VR agency and the EN prior to the EN referring any beneficiary to the State VR agency for services.

Agreements Between Employment Networks and State VR Agencies

§ 411.405 When does an agreement between an EN and the State VR agency have to be in place?

Each EN must have an agreement with the State VR agency prior to referring a beneficiary it is serving under the Ticket to Work program to the State VR agency for specific services.

§ 411.410 Does each referral from an EN to a State VR agency require its own agreement?

No. The agreements between ENs and State VR agencies should be broad-based and apply to all beneficiaries who may be referred by the EN to the State VR agency for services, although an EN and a State VR agency may want to

enter into an individualized agreement to meet the needs of a single beneficiary.

§ 411.415 Who will verify the establishment of agreements between ENs and State VR agencies?

The PM will verify the establishment of these agreements. Each EN is required to submit a copy of the agreement it has established with the State VR agency to the PM.

§ 411.420 What information should be included in an agreement between an EN and a State VR agency?

The agreement between an EN and a State VR agency should state the conditions under which the State VR agency will provide services to a beneficiary when the beneficiary is referred by the EN to the State VR agency for services. Examples of this information include-

(a) Procedures for making referrals and sharing information that will assist in providing services;

(b) A description of the financial responsibilities of each party to the agreement;

(c) The terms and procedures under which the EN will pay the State VR agency for providing services; and

(d) Procedures for resolving disputes under the agreement.

§ 411.425 What should a State VR agency do if it gets an attempted referral from an EN and no agreement has been established between the EN and the State VR agency?

The State VR agency should contact the EN to discuss the need to establish an agreement. If the State VR agency and the EN are not able to negotiate acceptable terms for an agreement, the State VR agency should notify the PM that an attempted referral has been made without an agreement.

§ 411.430 What should the PM do when it is informed that an EN has attempted to make a referral to a State VR agency without an agreement being in place?

The PM will contact the EN to explain that a referral cannot be made to the State VR agency unless an agreement has been established that sets out the conditions under which services will be provided when a beneficiary's ticket is assigned to the EN and the EN is referring the beneficiary to the State VR agency for specific services.

Resolving Disputes Arising Under Agreements Between Employment Networks and State VR Agencies

§ 411.435 How will disputes arising under the agreements between ENs and State VR agencies be resolved?

Disputes arising under agreements between ENs and State VR agencies must be resolved using the following steps:

(a) When procedures for resolving disputes are spelled out in the agreement between the EN and the State VR agency, those procedures must be used.

(b) If procedures for resolving disputes are not included in the agreement between the EN and the State VR agency and procedures for resolving disputes under contracts and interagency agreements are provided for in State law or administrative procedures, the State procedures must be used to resolve disputes under agreements between ENs and State VR agencies.

(c) If procedures for resolving disputes are not spelled out in the agreement or in State law or administrative procedures, the EN or the State VR agency may request that the PM recommend a resolution to the dispute.

(1) The request must be in writing and include:

(i) a copy of the agreement;

(ii) information on the issue(s) in dispute; and

(iii) information on the position of both the EN and the State VR agency regarding the dispute.

(2) The PM has 20 calendar days after receiving a written request to recommend a resolution to the dispute. If either the EN or the State VR agency does not agree with the PM's recommended resolution to the dispute, the EN or the State VR agency has 30 calendar days after receiving the PM's recommendation to request a decision by us on the matter in dispute.

Subpart G—Requirements For Individual Work Plans

§ 411.450 What is an Individual Work Plan?

An individual work plan (IWP) is a required written document signed by an employment network (EN) (other than a State VR agency) and a beneficiary, or a representative of a beneficiary, with a ticket. It is developed and implemented in partnership when a beneficiary and an EN have come to a mutual understanding to work together to pursue the beneficiary's employment goal under the Ticket to Work program.

§ 411.455 What is the purpose of an IWP?

The purpose of an IWP is to outline the specific employment services, vocational rehabilitation services and other support services that the EN and beneficiary have determined are necessary to achieve the beneficiary's stated employment goal. An IWP provides written documentation for both the EN and beneficiary. Both parties should develop and implement the IWP in partnership. The EN shall develop and implement the plan in a manner that gives the beneficiary the opportunity to exercise informed choice in selecting an employment goal. Specific services needed to achieve the designated employment goal are discussed and agreed to by both parties.

§ 411.460 Who is responsible for determining what information is contained in the IWP?

The beneficiary and the EN share the responsibility for determining the employment goal and the specific services needed to achieve that employment goal. The EN will present information and options in a way that affords the beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that employment goal.

§ 411.465 What are the minimum requirements for an IWP?

(a) An IWP must include at least—

(1) A statement of the vocational goal developed with the beneficiary, including, as appropriate, goals for earnings and job advancement;

(2) A statement of the services and supports necessary for the beneficiary to accomplish that goal;

(3) A statement of any terms and conditions related to the provision of these services and supports;

(4) A statement that the EN may not request or receive any compensation for the costs of services and supports from the beneficiary;

(5) A statement of the conditions under which an EN may amend the IWP or terminate the relationship;

(6) A statement of the beneficiary's rights under the Ticket to Work program, including the right to retrieve the ticket at any time if the beneficiary is dissatisfied with the services being provided by the EN;

(7) A statement of the remedies available to the beneficiary, including information on the availability of advocacy services and assistance in resolving disputes through the State Protection and Advocacy (P&A) System;

(8) A statement of the beneficiary's rights to privacy and confidentiality regarding personal information, including information about the beneficiary's disability;

(9) A statement of the beneficiary's right to seek to amend the IWP (the IWP can be amended if both the beneficiary and the EN agree to the change); and

(10) A statement of the beneficiary's right to have a copy of the IWP made

available to the beneficiary, including in an accessible format chosen by the beneficiary.

(b) The EN will be responsible for ensuring that each IWP contains this information.

§ 411.470 When does an IWP become effective?

(a) An IWP becomes effective if the following requirements are met—

(1) It has been signed by the beneficiary or the beneficiary's representative, and by a representative of the EN;

(2)(i) The beneficiary is eligible to assign his or her ticket under § 411.140(a); or

(ii) The beneficiary is eligible to reassign his or her ticket under § 411.150(a) and (b); and

(3) A representative of the EN submits a copy of the signed IWP to the PM and the PM receives the copy of the IWP.

(b) If all of the requirements in paragraph (a) of this section are met, the IWP will be effective on the first day on which the requirements of paragraphs (a)(1) and (a)(2) of this section are met.

Subpart H—Employment Network Payment Systems

§ 411.500 Definitions of terms used in this subpart.

(a) *Payment Calculation Base* means for any calendar year—

(1) In connection with a title II disability beneficiary (including a concurrent title II/title XVI disability beneficiary), the average monthly disability insurance benefit payable under section 223 of the Act for months during the preceding calendar year to all beneficiaries who are in current pay status for the month for which the benefit is payable; and

(2) In connection with a title XVI disability beneficiary (who is not concurrently a title II disability beneficiary), the average monthly payment of Supplemental Security Income (SSI) benefits based on disability payable under title XVI (excluding State supplementation) for months during the preceding calendar year to all beneficiaries who—

(i) Have attained age 18 but have not attained age 65;

(ii) Are not concurrent title II/title XVI beneficiaries; and

(iii) Are in current pay status for the month for which the payment is made.

(b) *Outcome Payment Period* means a period of 60 months, not necessarily consecutive, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of the performance of substantial gainful activity (SGA) or by reason of earnings from work. This period begins with the first month, ending after the date on which the ticket was first assigned, for which such benefits are not payable due to SGA or earnings. This period ends with the 60th month, consecutive or otherwise, ending after such date, for which such benefits are not payable due to SGA or earnings.

(c) *Outcome Payment System* is a system providing a schedule of payments to an employment network (EN) for each month, during an individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings.

(d) *Outcome Payment* means the payment for an outcome payment month.

(e) *Outcome Payment Month* means a month, during the individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings. The maximum number of outcome payment months for each ticket is 60.

(f) *Outcome-Milestone Payment System* is a system providing a schedule of payments to an EN that includes, in addition to any outcome payments which may be made during the individual's outcome payment period, payment for completion by a beneficiary of up to four milestones directed toward the goal of permanent employment. The milestones for which payment may be made must occur prior to the beginning of the individual's outcome payment period.

§ 411.505 How is an EN paid by SSA?

An EN can elect to be paid under either the outcome payment system or the outcome-milestone payment system. The EN will elect a payment system at the time the EN enters into an agreement with SSA. (For State VR agencies, see § 411.365.) The EN may periodically change its elected payment system as described in § 411.515.

§ 411.510 How is the State VR agency paid under the Ticket to Work program?

(a) The State VR agency's payment choices are described in § 411.355.

(b) The State VR agency's decision to serve the beneficiary must be communicated to the program manager (PM). (See § 411.115(k) for a definition of the PM.) At the same time, the State VR agency must notify the PM of its selected payment system for that beneficiary.

(c) For each beneficiary who is already a client of the State VR agency prior to receiving a ticket, the State VR agency will notify the PM of the payment system election for each such beneficiary at the time the beneficiary decides to assign the ticket to the State VR agency.

§ 411.515 Can the EN change its elected payment system?

(a) Yes. Any change by an EN in its elected EN payment system will apply to beneficiaries who assign their ticket to the EN after the EN's change in election becomes effective. A change in the EN's election will become effective with the first day of the month following the month in which the EN notifies us of the change. For beneficiaries who already assigned their ticket to the EN under the EN's earlier elected payment system, the EN's earlier elected payment system will continue to apply. These rules also apply to a change by a State VR agency in its elected EN payment system for cases in which the State VR agency serves a beneficiary as an EN.

(b) After an EN (or a State VR agency) first elects an EN payment system, the EN (or State VR agency) can choose to make one change in its elected payment system at any time prior to the close of which of the following is later:

(1) The 12th month following the month in which the EN (or State VR agency) first elects an EN payment system; or

(2) The 12th month following the month in which we implement the Ticket to Work program in the State in which the EN (or State VR agency) operates.

(c) After an EN (or a State VR agency) first elects a payment system, as part of signing the EN agreement with us (for State VR agencies, see § 411.365), the EN (or State VR agency) will have the opportunity to change from its existing elected payment system during times announced by us. We will offer the opportunity for each EN (and State VR agency) to make a change in its elected payment system at least every 18 months.

§ 411.520 How are beneficiaries whose tickets are assigned to an EN affected by a change in that EN's elected payment system?

A change in an EN's (or State VR agency's) elected payment system has no effect upon the beneficiaries who have assigned their ticket to the EN (or State VR agency).

§ 411.525 How are the EN payments calculated under each of the two EN payment systems?

(a) For payments for outcome payment months, both EN payment systems use the payment calculation base as defined in § 411.500(a)(1) or (a)(2), as appropriate.

(1)(i) Under the outcome payment system, we can pay up to 60 monthly payments to the EN. For each month for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings, the EN is eligible for a monthly outcome payment. Payment for an outcome payment month under the outcome payment system is equal to 40 percent of the payment calculation base for the calendar year in which such month occurs, rounded to the nearest whole dollar. (See § 411.550.)

(ii) If a disabled beneficiary's entitlement to Social Security disability benefits ends (see §§ 404.316(b), 404.337(b) and 404.352(b) of this chapter) or eligibility for SSI benefits based on disability or blindness terminates (see § 416.1335 of this chapter) because of the performance of SGA or by reason of earnings from work activity, we will consider any month after the month with which such entitlement ends or eligibility terminates to be a month for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings if—

(A) The individual has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) in that month that are more than the SGA threshold amount in § 404.1574(b)(2) of this chapter (or in § 404.1584(d) of this chapter for an individual who is statutorily blind); and

(B) The individual is not entitled to any monthly benefits under title II or eligible for any benefits under title XVI for that month.

(2) Under the outcome-milestone payment system, we can pay the EN for up to four milestones achieved by a beneficiary who has assigned his or her ticket to the EN. The milestones for which payment may be made must occur prior to the beginning of the beneficiary's outcome period and meet the requirements of § 411.535. In addition to the milestone payments, monthly outcome payments can be paid to the EN during the outcome payment period.

(b) The outcome-milestone payment system is designed so that the total payments to the EN for a beneficiary are less than the total amount to which payments would be limited if the EN were paid under the outcome payment system. Under the outcome-milestone payment system, the EN's total potential payment is about 85 percent of the total that would have been potentially payable under the outcome payment system for the same beneficiary.

(c) We will pay an EN to whom the individual has assigned a ticket only for milestones or outcomes achieved in months prior to the month in which the ticket terminates (see § 411.155). We will not pay a milestone or outcome payment to an EN based on an individual's work activity or earnings in or after the month in which the ticket terminates.

§ 411.530 How will the outcome payments be reduced when paid under the outcome-milestone payment system?

Under the outcome-milestone payment system, each outcome payment made to an EN with respect to an individual will be reduced by an amount equal to 1/60th of the milestone payments made to the EN with respect to the same individual.

§ 411.535 What are the milestones for which an EN can be paid?

(a) Under the outcome-milestone payment system, there are four milestones for which the EN can be paid. The milestones occur after the date on which the ticket was first assigned and after the beneficiary starts to work. The milestones are based on the earnings levels that we use when we consider if work activity is SGA. We will use the SGA threshold amount in § 404.1574(b)(2) of this chapter for beneficiaries who are not statutorily blind, and we will use the SGA threshold amount in § 404.1584(d) of this chapter for beneficiaries who are statutorily blind. We will use these SGA threshold amounts in order to measure if the beneficiary's earnings level meets the milestone objective.

(1) The first milestone is met when the beneficiary has worked for one calendar month and has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) for that month that are more than the SGA threshold amount.

(2) The second milestone is met when the beneficiary has worked for three calendar months within a 12-month period and has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) for each of the three months that are more than the SGA threshold amount. The month used to meet the first milestone can be included in the three months used to meet the second milestone.

(3) The third milestone is met when the beneficiary has worked for seven calendar months within a 12-month period and has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) for each of the seven months that are more than the SGA threshold amount. Any of the months used to meet the first two milestones can be included in the seven months used to meet the third milestone.

(4) The fourth milestone is met when the beneficiary has worked for 12 calendar months within a 15-month period and has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) for each of the 12 months that are more than the SGA threshold amount. Any of the months used to meet the first three milestones can be included in the 12 months used to meet the fourth milestone.

(b) An EN can be paid for a milestone only if the milestone is attained after a beneficiary has assigned his or her ticket to the EN. See § 411.575 for other milestone payment criteria.

§ 411.540 What are the payment amounts for each of the milestones?

(a) The payment for the first milestone is equal to 34 percent of the payment calculation base for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

(b) The payment for the second milestone is equal to 68 percent of the payment calculation base for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

(c) The payment for the third milestone is equal to 136 percent of the payment calculation base for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

(d) The payment for the fourth milestone is equal to 170 percent of the payment calculation base for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

(e) The month of attainment of the first milestone is the first month in which the individual has the required earnings as described in § 411.535.

(f) The month of attainment of the second milestone is the 3rd month, within a 12-month period, in which the individual has the required earnings as described in § 411.535.

(g) The month of attainment of the third milestone is the 7th month, within

a 12-month period, in which the individual has the required earnings as described in § 411.535.

(h) The month of attainment of the fourth milestone is the 12th month, within a 15-month period, in which the individual has the required earnings as described in § 411.535.

§ 411.545 What are the payment amounts for outcome payment months under the outcome-milestone payment system?

The amount of each monthly outcome payment under the outcome-milestone payment system is equal to 34 percent of the payment calculation base for the calendar year in which the month occurs, rounded to the nearest whole dollar, and reduced, if necessary, as described in § 411.530.

§ 411.550 What are the payment amounts for outcome payment months under the outcome payment system?

Under the outcome payment system, the payment for an outcome payment month is equal to 40 percent of the payment calculation base for the calendar year in which the month occurs, rounded to the nearest whole dollar.

§ 411.555 Can the EN keep the milestone and outcome payments even if the beneficiary does not achieve all 60 outcome months?

(a) Yes. The EN can keep each milestone and outcome payment for which the EN is eligible, even though the beneficiary does not achieve all 60 outcome months.

(b) Payments which we make or deny to an EN or State VR agency serving a beneficiary as an EN may be subject to adjustment (including recovery, as appropriate) if we determine that more or less than the correct amount was paid. This may happen, for example, because we determine that the payment determination was in error or because of—

(1) An allocation of a payment under § 411.560; or

(2) A determination or decision we make about an individual's right to benefits which causes the payment or denial of a payment to be incorrect (see § 411.590(d)).

(c) If we determine that an overpayment or underpayment has occurred, we will notify the EN or State VR agency serving a beneficiary as an EN of the adjustment. Any dispute which the EN or State VR agency has regarding the adjustment may be resolved under the rules in § 411.590(a) and (b).

§ 411.560 Is it possible to pay a milestone or outcome payment to more than one EN?

Yes. It is possible for more than one EN to receive payment based on the same milestone or outcome. If the beneficiary has assigned the ticket to more than one EN at different times, and more than one EN requests payment for the same milestone or outcome payment under its elected payment system, the PM will make a determination of the allocation of payment to each EN. The PM will make this determination based upon the contribution of the services provided by each EN toward the achievement of the outcomes or milestones. Outcome and milestone payments will not be increased because the payments are shared between two or more ENs.

§ 411.565 What happens if two or more ENs qualify for payment on the same ticket but have elected different EN payment systems?

We will pay each EN according to its elected EN payment system in effect at the time the beneficiary assigned the ticket to the EN.

§ 411.570 Can an EN request payment from the beneficiary who assigned a ticket to the EN?

No. Section 1148(b)(4) of the Act prohibits an EN from requesting or receiving compensation from the beneficiary for the services of the EN.

§ 411.575 How does the EN request payment for milestones or outcome payment months achieved by a beneficiary who assigned a ticket to the EN?

The EN will send its request for payment, evidence of the beneficiary's work or earnings and other information to the PM.

(a) *Milestone payments.* (1) We will pay the EN for milestones only if—

(i) The outcome-milestone payment system was the EN's elected payment system in effect at the time the beneficiary assigned a ticket to the EN;

(ii) The milestones occur prior to the outcome payment period (see § 411.500(b));

(iii) The requirements in § 411.535 are met; and

(iv) The ticket has not terminated for any of the reasons listed in § 411.155.

(2) The EN must request payment for each milestone achieved by a beneficiary who has assigned a ticket to the EN. The request must include evidence that the milestone was achieved, and other information as we may require, to evaluate the EN's request. We do not have to stop monthly benefit payments to the beneficiary before we can pay the EN for milestones achieved by the beneficiary.

(b) *Outcome payments.* (1) We will pay an EN an outcome payment for a month if—

(i)(A) Social Security disability benefits and Federal SSI cash benefits are not payable to the individual for that month due to work or earnings; or

(B) The requirements of § 411.525(a)(1)(ii) are met in a case where the beneficiary's entitlement to Social Security disability benefits has ended or eligibility for SSI benefits based on disability or blindness has terminated because of work activity or earnings; and

(ii) We have not already paid for 60 outcome payment months on the same ticket; and

(iii) The ticket has not terminated for any of the other reasons listed in § 411.155.

(2) The EN must request payment for outcome payment months on at least a quarterly basis. Along with the request, the EN must submit evidence of the beneficiary's work or earnings (e.g. a statement of monthly earnings from the employer or the employer's designated payroll preparer, an unaltered copy of the beneficiary's pay stub). *Exception:* If the EN does not currently hold the ticket because it is unassigned or assigned to another EN, the EN must request payment, but is not required to submit evidence of the beneficiary's work or earnings.

§ 411.580 Can an EN receive payments for milestones or outcome payment months that occur before the beneficiary assigns a ticket to the EN?

No. An EN may be paid only for milestones or outcome payment months that are achieved after the ticket is assigned to the EN.

§ 411.585 Can a State VR agency and an EN both receive payment for serving the same beneficiary?

Yes. It is possible if the State VR agency serves the beneficiary as an EN. In this case, both the State VR agency serving as an EN and the other EN may be eligible for payment based on the same ticket (see § 411.560).

(a) If a State VR agency is paid by us under the cost reimbursement payment system with respect to a ticket, such payment precludes any subsequent payment by us based on the same ticket to an EN or to a State VR agency serving as an EN under either the outcome payment system or the outcome-milestone payment system.

(b) If an EN or a State VR agency serving a beneficiary as an EN is paid by us under one of the EN payment systems with respect to a ticket, such payment precludes subsequent payment to a State VR agency under the cost

reimbursement payment system based on the same ticket.

§ 411.587 Which provider will SSA pay if, with respect to the same ticket, SSA receives a request for payment from an EN or a State VR agency that elected payment under an EN payment system and a request for payment from a State VR agency that elected payment under the cost reimbursement payment system?

(a) We will pay the provider that first meets the requirements for payment under its elected payment system applicable to the beneficiary who assigned the ticket.

(b) In the event that both providers first meet the requirements for payment under their respective payment systems in the same month, we will pay the claim of the provider to which the beneficiary's ticket is currently assigned or, if the ticket is not currently assigned to either provider, the claim of the provider to which the ticket was most recently assigned.

§ 411.590 What can an EN do if the EN disagrees with our decision on a payment request?

(a) If an EN other than a State VR agency has a payment dispute with us, the dispute shall be resolved under the dispute resolution procedures contained in the EN's agreement with us.

(b) If a State VR agency serving a beneficiary as an EN has a dispute with us regarding payment under an EN payment system, the State VR agency may, within 60 days of receiving notice of our decision, request reconsideration in writing. The State VR agency must send the request for reconsideration to the PM. The PM will forward to us the request for reconsideration and a recommendation. We will notify the State VR agency of our reconsidered decision in writing.

(c) An EN (including a State VR agency) cannot appeal determinations we make about an individual's right to benefits (e.g. determinations that disability benefits should be suspended, terminated, continued, denied, or stopped or started on a different date than alleged). Only the beneficiary or applicant or his or her representative can appeal these determinations. See § 404.900 *et seq.* and 416.1400 *et seq.* of this chapter.

(d) Determinations or decisions which we make about an individual's right to benefits may affect an EN's eligibility for payment, and may cause payments which we have already made to an EN (or a denial of a payment to an EN) to be incorrect, resulting in an overpayment or underpayment to the EN. If this happens, we will make any necessary adjustments to the payments (see § 411.555). While an EN cannot appeal our determination about an individual's right to benefits, the EN may furnish any evidence the EN has which relates to the issue(s) to be decided on appeal if the individual appeals our determination.

§ 411.595 What oversight procedures are planned for the EN payment systems?

We use audits, reviews, studies and observation of daily activities to identify areas for improvement. Internal reviews of our systems security controls are regularly performed. These reviews provide an overall assurance that our business processes are functioning as intended. The reviews also ensure that our management controls and financial management systems comply with the standards established by the Federal Managers' Financial Integrity Act and the Federal Financial Management Improvement Act. These reviews operate in accordance with the Office of Management and Budget Circulars A–123, A–127 and Appendix III to A–130. Additionally, our Executive Internal Control Committee meets periodically and provides further oversight of program and management control issues.

§ 411.597 Will SSA periodically review the outcome payment system and the outcome-milestone payment system for possible modifications?

(a) Yes. We will periodically review the system of payments and their programmatic results to determine if they provide an adequate incentive for ENs to assist beneficiaries to enter the work force, while providing for appropriate economies.

(b) We will specifically review the limitation on monthly outcome payments as a percentage of the payment calculation base, the difference in total payments between the outcome-milestone payment system and the outcome payment system, the length of the outcome payment period, and the number and amount of milestone payments, as well as the benefit savings and numbers of beneficiaries going to work. We will consider altering the payment system conditions based upon the information gathered and our determination that an alteration would better provide for the incentives and economies noted above.

Subpart I—Ticket to Work Program Dispute Resolution

Disputes Between Beneficiaries and Employment Networks

§ 411.600 Is there a process for resolving disputes between beneficiaries and ENs that are not State VR agencies?

Yes. After an IWP is signed, a process is available which will assure each party a full, fair and timely review of a disputed matter. This process has three steps.

(a) The beneficiary can seek a solution through the EN's internal grievance procedures.

(b) If the EN's internal grievance procedures do not result in an agreeable solution, either the beneficiary or the EN may seek a resolution from the PM. (See § 411.115(k) for a definition of the PM.)

(c) If either the beneficiary or the EN is dissatisfied with the resolution proposed by the PM, either party may request a decision from us.

§ 411.605 What are the responsibilities of the EN that is not a State VR agency regarding the dispute resolution process?

The EN must:

(a) Have grievance procedures that a beneficiary can use to seek a resolution to a dispute under the Ticket to Work program;

(b) Give each beneficiary seeking services a copy of its internal grievance procedures;

(c) Inform each beneficiary seeking services of the right to refer a dispute first to the PM for review, and then to us for a decision; and

(d) Inform each beneficiary of the availability of assistance from the State P&A system.

§ 411.610 When should a beneficiary receive information on the procedures for resolving disputes?

Each EN that is not a State VR agency must inform each beneficiary seeking services under the Ticket to Work program of the procedures for resolving disputes when—

(a) The EN and the beneficiary complete and sign the IWP;

(b) Services in the beneficiary's IWP are reduced, suspended or terminated; and

(c) A dispute arises related to the services spelled out in the beneficiary's IWP or to the beneficiary's participation in the program.

§ 411.615 How will a disputed issue be referred to the PM?

The beneficiary or the EN that is not a State VR agency may ask the PM to review a disputed issue. The PM will

contact the EN to submit all relevant information within 10 working days. The information should include:

(a) A description of the disputed issue(s);

(b) A summary of the beneficiary's position, prepared by the beneficiary or a representative of the beneficiary, related to each disputed issue;

(c) A summary of the EN's position related to each disputed issue; and

(d) A description of any solutions proposed by the EN when the beneficiary sought resolution through the EN's grievance procedures, including the reasons the beneficiary rejected each proposed solution.

§ 411.620 How long does the PM have to recommend a resolution to the dispute?

The PM has 20 working days to provide a written recommendation. The recommendation should explain the reasoning for the proposed resolution.

§ 411.625 Can the beneficiary or the EN that is not a State VR agency request a review of the PM's recommendation?

(a) Yes. After receiving the PM's recommendation, either the beneficiary or the EN may request a review by us. The request must be in writing and received by the PM within 15 working days of the receipt of the PM's recommendation for resolving the dispute.

(b) The PM has 10 working days to refer the request for a review to us. The request for a review must include:

(1) A copy of the beneficiary's IWP;

(2) Information and evidence related to the disputed issue(s); and

(3) The PM's conclusion(s) and recommendation(s).

§ 411.630 Is SSA's decision final?

Yes. Our decision is final. If either the beneficiary or the EN that is not a State VR agency is unwilling to accept our decision, either has the right to terminate its relationship with the other.

§ 411.635 Can a beneficiary be represented in the dispute resolution process under the Ticket to Work program?

Yes. Both the beneficiary and the EN that is not a State VR agency may use an attorney or other individual of their choice to represent them at any step in the dispute resolution process. The P&A system in each State and U.S. Territory is available to provide assistance and advocacy services to beneficiaries seeking or receiving services under the Ticket to Work program, including assistance in resolving issues at any stage in the dispute resolution process.

Disputes Between Beneficiaries and State VR Agencies

§ 411.640 Do the dispute resolution procedures of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 et seq.), apply to beneficiaries seeking services from the State VR agency?

Yes. The procedures in the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*) apply to any beneficiary who has assigned a ticket to a State VR agency. ENs that are State VR agencies are subject to the provisions of the Rehabilitation Act. The Rehabilitation Act requires the State VR agency to provide each person seeking or receiving services with a description of the services available through the Client Assistance Program authorized under section 112 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 732). It also provides the opportunity to resolve disputes using formal mediation services or the impartial hearing process in section 102(c) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 722(c)). ENs that are not State VR agencies are not subject to the provisions of Title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*).

Disputes Between Employment Networks and Program Managers

§ 411.650 Is there a process for resolving disputes between ENs that are not State VR agencies and PMs, other than disputes on a payment request?

Yes. Under the agreement to assist us in administering the Ticket to Work program, a PM is required to have procedures to resolve disputes with ENs that do not involve an EN's payment request. (See § 411.590 for the process for resolving disputes on EN payment requests.) This process must ensure that:

(a) The EN can seek a solution through the PM's internal grievance procedures; and

(b) If the PM's internal grievance procedures do not result in a mutually agreeable solution, the PM shall refer the dispute to us for a decision.

§ 411.655 How will the PM refer the dispute to us?

The PM has 20 working days from the failure to come to a mutually agreeable solution with an EN to refer the dispute to us with all relevant information. The information should include:

(a) A description of the disputed issue(s);

(b) A summary of the EN's and PM's position related to each disputed issue; and

(c) A description of any solutions proposed by the EN and PM when the EN sought resolution through the PM's grievance procedures, including the reasons each party rejected each proposed solution.

§ 411.660 Is SSA's decision final?

Yes. Our decision is final.

Subpart J—The Ticket to Work Program and Alternate Participants Under the Programs For Payments For Vocational Rehabilitation Services

§ 411.700 What is an alternate participant?

An alternate participant is any public or private agency (other than a participating State VR agency described in §§ 404.2104 and 416.2204 of this chapter), organization, institution, or individual with whom the Commissioner has entered into an agreement or contract to provide VR services to disabled beneficiaries under the programs described in subpart V of part 404 and subpart V of part 416 of this chapter. In this subpart J, we refer to these programs as the programs for payments for VR services.

§ 411.705 Can an alternate participant become an EN?

In any State where the Ticket to Work program is implemented, each alternate participant whose service area is in that State will be asked to choose if it wants to participate in the program as an EN.

§ 411.710 How will an alternate participant choose to participate as an EN in the Ticket to Work program?

(a) When the Ticket to Work program is implemented in a State, each alternate participant whose service area is in that State will be notified of its right to choose to participate as an EN in the program in that State. The notification to the alternate participant will provide instructions on how to become an EN and the requirements that an EN must meet to participate in the Ticket to Work program.

(b) An alternate participant who chooses to become an EN must meet the requirements to be an EN, including—

(1) Enter into an agreement with SSA to participate as an EN under the Ticket to Work program (see § 411.320);

(2) Agree to serve a prescribed service area (see § 411.320);

(3) Agree to the EN reporting requirements (see § 411.325); and

(4) Elect a payment option under one of the two EN payment systems (see § 411.505).

§ 411.715 If an alternate participant becomes an EN, will beneficiaries for whom an employment plan was signed prior to implementation be covered under the Ticket to Work program payment provisions?

No. When an alternate participant becomes an EN in a State in which the

Ticket to Work program is implemented, those beneficiaries for whom an employment plan was signed prior to the date of implementation of the program in the State, will continue to be covered for a limited time under the programs for payments for VR services (see § 411.730).

§ 411.720 If an alternate participant chooses not to become an EN, can it continue to function under the programs for payments for VR services?

Once the Ticket to Work program has been implemented in a State, the alternate participant programs for payments for VR services begin to be phased-out in that State. We will not pay any alternate participant under these programs for any services that are provided under an employment plan that is signed on or after the date of implementation of the Ticket to Work program in that State. If an employment plan was signed before that date, we will pay the alternate participant, under the programs for payments for VR services, for services provided prior to January 1, 2004 if all other requirements for payment under these programs are met. We will not pay an alternate participant under these programs for any services provided on or after January 1, 2004.

§ 411.725 If an alternate participant becomes an EN and it has signed employment plans, both as an alternate participant and an EN, how will SSA pay for services provided under each employment plan?

We will continue to abide by the programs for payments for VR services in cases where services are provided to a beneficiary under an employment plan signed prior to the date of implementation of the Ticket to Work program in the State. However, we will not pay an alternate participant under these programs for services provided on or after January 1, 2004. For those employment plans signed by a beneficiary and the EN after implementation of the program in the State, the EN's elected EN payment system under the Ticket to Work program applies.

§ 411.730 What happens if an alternate participant signed an employment plan with a beneficiary before Ticket to Work program implementation in the State and the required period of substantial gainful activity is not completed by January 1, 2004?

The beneficiary does not have to complete the nine-month continuous period of substantial gainful activity (SGA) prior to January 1, 2004, in order for the costs of the services to be payable under the programs for payments for VR services. The nine-month SGA period can be completed after January 1, 2004. However, SSA will not pay an alternate participant under these programs for the costs of any services provided after December 31, 2003.

[FR Doc. 01–31567 Filed 12–27–01; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Request for Public Suggestions on Ways To Support Youth With Disabilities in Transition to Adulthood

AGENCY: Social Security Administration (SSA).

ACTION: Notice with request for suggestions.

SUMMARY: We are requesting suggestions from the public on ways to support youth with disabilities that would help them in the transition to adulthood.

DATES: The comment period ends February 26, 2002.

ADDRESSES: Comments should be submitted:

- In writing, to the Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, 107 Altmeyer Building, Baltimore, MD 21235–6401;
- By E-mail to TTWWIIA@ssa.gov; or
- By telefax to (410) 966–1278.
- By web site entry to SSA's Public Policy Information Site at *http://policy.ssa.gov.* Click on public comment. Click on open discussions. The direct link is *http://policy.ssa.gov/si/ttwwiia.nsf.*

FOR FURTHER INFORMATION CONTACT: Christa Bucks Camacho, Social Security Administration, Office of Employment Support Programs, 6401 Security Boulevard, 107 Altmeyer Building, Baltimore, MD 21235–6401; Phone: (410) 966–5147 or TTY 1 (800) 988–5906; or through E-mail to christa.bucks@ssa.gov.

SUPPLEMENTARY INFORMATION: We are publishing final rules for the Ticket to Work and Self-Sufficiency program (Ticket to Work program) in today's **Federal Register**. Under this program, qualified disability beneficiaries will be issued tickets they can use to access vocational rehabilitation services, employment services and other support services from approved providers. SSA will pay the service providers if the beneficiaries achieve certain outcomes.

In the final rules for the Ticket to Work program, we have decided not to issue tickets to those beneficiaries under age 18 or to those who have attained age 18, but for whom we have not yet conducted a redetermination of their eligibility under the disability standard for adults. We are interested in exploring various approaches to assist youth with disabilities who receive payments from us under one of the programs we administer. Therefore, we are seeking suggestions from the public to help us develop new programs that will assist these beneficiaries make the transition to independence, further education, and enhance careers in the workforce and that will complement the Ticket to Work program.

During the comment period for the proposed rules for the Ticket to Work program, we received suggestions from the public on ways to provide alternative tools to assist young beneficiaries. We invite the public to submit additional opinions and suggestions on alternative options to support the transition of young beneficiaries to adulthood. To assist you in preparing your response, we offer the following questions as a guide. However, we welcome any suggestions you may have.

- What approaches could benefit these beneficiaries in preparing for future employment?
- What types of services might be useful to help these beneficiaries?
- The successful completion of a transition plan at the high school or post-secondary level is an essential part of preparing students with disabilities for independence as adults. What events or steps in the transition process could we establish for these beneficiaries that would demonstrate progress through their plan towards independence, education, and employment?
- What incentives would be appropriate to encourage providers, educational facilities, employers and others to provide assistance toward successful employment outcomes?
- Would it be appropriate and useful to expand the Ticket age limits to include disability beneficiaries 16 and 17 years old? How would the Ticket program assist these individuals?

Dated: December 11, 2001.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 01–31568 Filed 12–27–01; 8:45 am]

BILLING CODE 4191–02–P

Federal Register

Friday,

December 28, 2001

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Regulatory Program; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–093–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving a proposed amendment to the West Virginia surface coal mining regulatory program (the West Virginia program) authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in Enrolled Senate Bill 5003. The amendment creates a Special Reclamation Fund Advisory Council and increases the special reclamation tax rate on coal to provide additional revenues for the West Virginia Special Reclamation Fund.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Background on West Virginia's Alternative Bonding System (ABS)

On January 21, 1981, the Secretary conditionally approved West Virginia's ABS. The ABS has two basic components: the site-specific or incremental bond posted by the permittee and the Special Reclamation Fund (the Fund), comprised of a special reclamation tax, civil penalty assessments, and interest earned on the revenues, which is intended to cover any reclamation costs in excess of the site-specific or incremental bond.

At the time of approval, the Secretary required that the State provide an actuarial study of the Fund demonstrating that the amount of money going into the Fund would cover the demands to be placed on it, along with any program changes needed to redress any deficiencies identified by the actuarial study (46 FR 5956).

The State submitted an actuarial study on October 29, 1982 (Administrative Record No. WV–456). The study concluded that the Fund was solvent, in part because it contained a funding mechanism (the special reclamation tax) to provide for the cost of future reclamation. On March 1, 1983 (41 FR 8447), we subsequently found that the State's alternative bonding provisions were in accordance with section 509(c) of SMCRA and the Federal criteria for approval of alternative bonding systems at 30 CFR 806.11(b), which has since been recodified as 30 CFR 800.11(e). Consequently, we removed the condition (25) relating to our approval of the State's ABS.

By 1988–89, our oversight evaluations indicated that the Fund lacked sufficient revenue to reclaim all outstanding bond forfeiture sites. In addition, the cash balance in the Fund ceased earning interest because of losses suffered by the State's Consolidated Investment Fund. On October 1, 1991, we notified the State, pursuant to 30 CFR 732.17(c) and (e), that a program amendment was necessary because the Fund no longer met the requirements of 30 CFR 800.11(e).

In a series of amendments beginning in 1993, West Virginia revised portions of its program in an attempt to resolve some of our concerns. For example, the State increased its special reclamation tax from one cent to three cents per ton of coal mined and adopted site-specific bonding regulations. In addition, Deloitte and Touche, an accounting and consulting company, completed an actuarial study of the Fund in March 1993. The study concluded that the Fund had an accrual deficit position as of June 30, 1992, but that the Fund would realize gradual improvement over the next five years.

On October 4, 1995 (60 FR 51900), we announced our partial approval of the State's amendments. However, as specified in 30 CFR 948.16 (jjj), (kkk), and (lll), we also required the State to amend certain statutory provisions to fully eliminate the deficit in the Special Reclamation Fund and to provide for treatment of pollutional discharges from bond forfeiture sites.

OSM and the State conducted additional studies that were completed in September 1997 and June 1999 to assess the financial condition of the Fund. The studies found that the Fund could eventually be solvent if its responsibilities were limited to land reclamation. However, the studies also determined that treatment of pollutional discharges from forfeited sites required additional revenue.

By letter dated September 29, 2000, we informed the West Virginia Department of Environmental Protection (WVDEP) that Federal corrective action would be taken, unless the Legislature adopted the necessary changes to the Fund to resolve the identified deficiencies (Administrative Record No. WV–1181). However, the Legislature adjourned without enacting the proposed changes.

On April 18, 2001, WVDEP requested additional time to develop and obtain approval of statutory and regulatory changes to the State's bonding provisions (Administrative Record No. WV–1206). In addition, WVDEP requested that we conduct an informal review of a report entitled ''The Mountain State Clean Water Trust Fund.'' Under a plan that was based on the report, WVDEP intended to bifurcate the Fund into two distinct accounts, one for land reclamation and one for water treatment.

In a letter dated June 29, 2001, we initiated corrective action under 30 CFR 733.12(b). In that letter, which is known as a Part 733 notification, we notified the State that it must initiate certain

remedial measures by July 27, 2001, to satisfy the outstanding required amendments at 30 CFR 948.16 (kkk), (jjj), and (lll) and that it must submit the necessary, fully-enacted and adopted statutory and regulatory revisions no later than 45 days after the end of the 2002 regular session of the Legislature (Administrative Record No. WV–1218). As stated in the letter, if West Virginia failed to take these measures, we intended to recommend that the Secretary partially withdraw approval of the State program and implement a partial Federal regulatory program.

On July 27, 2001, WVDEP submitted draft statutory and regulatory revisions in response to our Part 733 notification (Administrative Record No. WV–1231). The draft changes are commonly referred to as the 20/20 Plan.

By e-mail message dated August 8, 2001, WVDEP provided us with additional draft legislative changes for informal review (Administrative Record No. WV–1233A). The proposed revisions are commonly called the 7–Up Plan.

On August 9 and August 28, 2001, we provided WVDEP our informal review of the proposed statutory revisions that were submitted on August 8 (Administrative Record Nos. WV–1233 and WV–1235). Under the draft legislation, the special reclamation tax would be increased from 3 cents to 14 cents per ton of clean coal mined for 39 months and reduced to 7 cents thereafter with biennial review by an advisory council.

By letter dated August 13, 2001, WVDEP provided us with a schedule for submitting statutory and regulatory revisions to the Legislature in response to our Part 733 notification (Administrative Record No. WV–1234). The letter specified that the State would formally submit the program amendment to us by April 30, 2002. The letter also indicated that the statutory changes could be presented to a special session of the Legislature before that date.

We released our financial analysis of the State's draft legislation on September 7, 2001 (Administrative Record No. WV–1236). In that report, we concluded that the proposal would generate sufficient revenues for about 9 years, but future adjustments would have to be made to meet long-term needs of the Fund.

On September 15, 2001, a special session of the West Virginia Legislature passed Senate Bill 5003, which is intended to eliminate the deficit in the Fund and provide for water treatment at bond forfeiture sites. The Governor of West Virginia (Governor) signed Enrolled Senate Bill 5003 on October 4, 2001. The effective date of the bill is October 4, 2001, but none of the provisions could be implemented without OSM approval. WVDEP submitted the legislation as a program amendment on September 24, 2001 (Administrative Record No. WV–1238).

III. Submission of the Amendment

By letter dated September 17, 2001 (Administrative Record Number WV–1237), the WVDEP notified us of the legislation that was approved during a special session of the West Virginia Legislature. By letter dated September 24, 2001 (Administrative Record Number WV–1238), the WVDEP formally submitted the legislation as a proposed program amendment.

As discussed in Section II of this preamble, the amendment, consisting of statutory revisions, was submitted in response to our Part 733 notification of June 29, 2001, and certain outstanding required program amendments. In accordance with our Part 733 notification, the State informed us on November 30, 2001, that it is developing regulatory changes that will be submitted to the Legislature during the upcoming regular legislative session that begins on January 9, 2002 (Administrative Record Number WV–1253).

The amendment being considered today consists only of changes to the W.Va. Code, as amended by Enrolled Senate Bill 5003. The amendment adds W.Va. Code section 22–1–17, which establishes the Special Reclamation Fund Advisory Council (Advisory Council). The amendment also revises W.Va. Code 22–3–11 by increasing the special reclamation tax rate and revises W.Va. Code 22–3–12 by deleting certain site-specific bonding provisions.

We announced receipt of the proposed amendment on October 24, 2001 (66 FR 53749). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number WV–1243). While the amendment consists of Enrolled Senate Bill 5003, we also made Engrossed Senate Bill 5003 available for public review and comment. With a few exceptions, Engrossed Senate Bill 5003 is substantively identical to Enrolled Senate Bill 5003. However, the engrossed bill clearly shows, via underscoring and strikethroughs, most of the statutory language that has been added to or deleted from the W.Va. Code as a result of the enactment of Senate Bill 5003. We quoted the new and revised provisions in their entirety in the October 24, 2001, **Federal Register** notice in which we asked for public comment on the amendment. We did not hold a public hearing or meeting on the amendment because no one requested one. The public comment period closed on November 23, 2001.

We received comments on this amendment from the U.S. Department of Labor, Mine Safety and Health Administration, and the U.S. Environmental Protection Agency. In addition, we received comments from the West Virginia Highlands Conservancy (WVHC); Morgan Worldwide Mining Consultants, Inc., consultant for the WVHC; and the West Virginia Coal Association, Inc.

On November 6, the WVHC requested that the comment period on the amendment be extended through December 14, 2001 (Administrative Record No. WV–1245). On November 9, 2001, we denied the request (Administrative Record Number WV–1245). See Section V., ''Public Comments'' Item 4, ''Alleged abuse of discretion by failing to grant an extension to the comment period,'' below.

IV. OSM's Findings

This section contains our findings on the amendment.

As stated above in Section II, we notified the State in accordance with 30 CFR 733.12(b) that it must submit fully-enacted and adopted statutory and regulatory revisions to fix its ABS within 45 days after the close of the 2002 regular legislative session. We estimate this deadline will occur about April 23, 2002. This rule announces our decision to approve the amendment, based on the findings in this section of the preamble. However, because of the complexity of the issues concerning the long-term solvency of the ABS, we are deferring decision on the broader issue of whether the State has fully fixed its ABS. We will use the time remaining between now and the deadline mentioned above to conduct further analysis and to allow all interested parties the necessary time to complete a comprehensive review. We will publish a separate notice in the **Federal Register** soliciting further comments on the effect these amendments have on the ABS and whether additional measures are needed to restore full consistency with Federal ABS requirements.

Under 30 CFR 732.17(h)(10), we must use the applicable criteria in 30 CFR 732.15 in approving or disapproving State program amendments. Because this amendment pertains only to performance bonds, the applicable

criteria are those in 30 CFR 732.15(b)(6). That paragraph provides that the State regulatory authority must have the authority under State laws and regulations—and the State program must include provisions—to ''[i]mplement, administer and enforce a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with the requirements of subchapter J of [30 CFR Chapter VII].'' As discussed in Section II of this preamble, the Secretary made the finding required by 30 CFR 732.15(b)(6) when he conditionally approved the West Virginia ABS on January 21, 1981, with full approval following on March 1, 1983.

The relevant provisions of subchapter J are those in 30 CFR 800.11(e), which establishes criteria for approval of an ABS as part of a State or Federal program. Therefore, our findings focus on those provisions of the amendment relevant to the criteria in 30 CFR 800.11(e). We do not necessarily discuss changes that are not pertinent to those criteria.

OSM Directive STP–1 interprets the requirements of 30 CFR 800.11(e) as they pertain to State program amendment approval. Appendix 12 of Directive STP–1 specifies that, once the Secretary approves an ABS, we may approve subsequent revisions to the ABS through the State program amendment process as long as those revisions do not adversely impact previous findings. The directive further states that, when a proposed amendment concerns an ABS that no longer meets the criteria in 30 CFR 800.11(e), we may approve the amendment even if it does not fully remedy all deficiencies, provided we find that the amendment does not adversely affect the solvency of the ABS. Based upon this rationale, we may approve any amendment that improves the ABS, even as we defer on the question of whether the amendment fully restores solvency or compliance with the other requirements of 30 CFR 800.11(e).

We find that this amendment will improve the solvency of the ABS by adding approximately $1.9 million per month to the Special Reclamation Fund, beginning January 1, 2002. However, because this tax rate increase cannot take effect without our approval, we believe that delaying a decision on these funding enhancements until we decide the broader question of whether the amendment fully satisfies 30 CFR 948.16(lll), as a commenter advocates, would be counterproductive. Our findings do not attempt to determine whether the ABS as revised by this amendment would be fully consistent with the criteria in 30 CFR 800.11(e). Instead, we conclude that the amendment improves the ability of the ABS to comply with those criteria. As discussed above, we will separately determine, after opportunity for further comment, whether this amendment has satisfied all outstanding requirements or whether additional measures are needed.

See Section II above, for a review of the history of our approval of West Virginia's ABS and the circumstances that preceded the State's submittal of this amendment.

1. W.Va. Code 22–1–17 Special Reclamation Fund Advisory Council

This new section creates the Advisory Council.

Purpose and Operation of the Advisory Council

Senate Bill 5003 creates the Advisory Council to ensure ''the effective, efficient and financially stable operation of the special reclamation fund.'' As required by W.Va. Code 22–1–17, the Advisory Council must ''study the effectiveness, efficiency, and financial stability of the special reclamation fund with an emphasis on development of a financial process that ensures the long-term stability of the special reclamation program.'' The Advisory Council must submit an annual report to the West Virginia Legislature and the Governor on the adequacy of the special reclamation tax (see Finding 2) and the fiscal condition of the Fund. The report must include recommendations as to whether any adjustments to the special reclamation tax should be made, considering the cost, timeliness and adequacy of bond forfeiture reclamation, including water treatment.

The Advisory Council will consist of eight members, including the Secretary of the WVDEP (or designee), the Treasurer of the State of West Virginia (or designee), and the Director of the National Mine Land Reclamation Center at West Virginia University. In addition, the Governor will appoint five members: four representing the interests of the coal industry, environmental protection organizations, coal miners, and the general public; and one who, by training and profession, is an actuary or economist.

The Federal regulations at 30 CFR 800.11(e)(1) require that an ABS ensure that the regulatory authority has sufficient money to complete the reclamation plan for any areas which may be in default at any time. We find that the Advisory Council, which has a statutory mandate to study the effectiveness, efficiency, and financial stability of the Fund, should prove useful in helping the ABS comply with 30 CFR 800.11(e). Therefore, we are approving the addition of W.Va. Code 22–1–17 to the West Virginia program.

2. W.Va. Code 22–3–11 Bonds; Amount and Method of Bonding; Bonding Requirements; Special Reclamation Tax and Fund; Prohibited Acts; Period of Liability

a. Incremental Bonding—Bond Amount

In W.Va. Code 22–3–11(a), the State has increased the amount of the penal bond from one thousand dollars per acre to not less than one thousand dollars nor more than five thousand dollars for each acre or fraction thereof. This revision clarifies that incremental bonding is subject to the same per-acre bonding rate range as found in W.Va. Code 22–3–12(b)(1), which pertains to site-specific bonding of an entire permit area.

We find that this change would improve the ability of the West Virginia ABS to comply with 30 CFR 800.11(e). Therefore, we are approving it.

b. Use of Funds

As amended, W.Va. Code 22–3–11(g) provides that moneys accrued in the Fund are reserved for the purposes set forth in W.Va. Code 22–3–11, which concerns bonds, and W.Va. Code 22–1–17, which concerns the Advisory Council. The Legislature also added language to prohibit the expenditure of moneys from the Fund to reclaim lands that are ''eligible for abandoned mine land (AML) reclamation funds under article two of this chapter.''

The latter change is apparently related to section 402(g)(4)(B) of SMCRA. As enacted on November 5, 1990, that provision authorizes use of AML reclamation funds to perform land reclamation on, and treat pollutional discharges of water from, (1) unreclaimed sites that were mined after August 4, 1977, under a program other than a permanent regulatory program approved by the Secretary, and (2) permanent program bond forfeiture sites with surety bonds for which the surety became insolvent on or before November 5, 1990. In both cases, SMCRA authorizes use of AML reclamation funds only if funds available from the bond or other form of financial guarantee or from any other source are not sufficient to provide adequate reclamation or abatement.

West Virginia revised its Abandoned Mine Lands and Reclamation Act and its AML Plan in response to the addition of section 402(g)(4)(B) to SMCRA.

However, as discussed in the March 26, 1993, **Federal Register** (58 FR 16353, 16354), we deferred a decision on the State's proposed revisions because they were not fully consistent with the Federal provisions.

Because of our deferral, addition of the phrase ''where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter'' to W.Va. Code 22–3–11(g) does not preclude use of moneys from the Fund to reclaim any site for which a bond is required under 30 CFR Part 800 and section 509 of SMCRA. Therefore, we find that this revision to W.Va. Code 22–3–11(g) is not inconsistent with the bonding requirements of 30 CFR Part 800 and section 509 of SMCRA, and we are approving it.

c. Water Treatment Expenditures

The State has deleted a provision in W.Va. Code 22–3–11(g) that limited spending from the Fund for water treatment systems to 25 percent of the annual amount of the fees collected. This provision restricted expenditures for water treatment purposes, without regard to the amount needed to adequately treat such sites and ensure compliance with applicable effluent limitations and water quality standards. The deletion of this provision is necessary to provide for the complete abatement or treatment of pollutional discharges of water from bond forfeiture sites.

The deletion of the 25 percent limitation partially satisfies the requirement codified at 30 CFR 948.16(jjj). However, to fully satisfy this requirement, the State must also delete the 25-percent limitation in its regulations at Code of State Regulations (CSR) 38–2–12.5(d). Under 30 CFR 948.16(jjj) the State must revise W.Va. Code 22–3–11(g) and CSR 38–2–12.5(d) to remove the limitation on the expenditure of funds for water treatment or to otherwise provide for the treatment of polluted water discharged from all bond forfeiture sites. As mentioned above, WVDEP is in the process of further revising its regulations. The State has said that it plans to delete the 25-percent limitation in its regulations at CSR 38–2–12.5(d) during the upcoming regular legislative session.

In addition, revised subsection 22–3–11(g) states that the Secretary ''may,'' rather than ''shall,'' ''use the special reclamation fund for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands * * *.'' Ordinarily, the use of the word ''may'' implies discretion. However, the West Virginia Supreme Court of Appeals has determined that the WVDEP has a mandatory duty to use bond moneys for acid mine drainage treatment. *State ex rel. Laurel Mountain* v. *Callaghan*, 418 S.E.2d 580 (1990). Moreover, in a subsequent decision, the Court held that W.Va. Code 22A–3–11(g), now codified as 22–3–11(g), imposes upon the WVDEP ''a mandatory, nondiscretionary duty to utilize moneys from the SRF [Special Reclamation Fund] * * *, to treat AMD [acid mine drainage] at bond forfeiture sites when the proceeds of the forfeited bonds are less than the actual cost of reclamation.'' *State ex rel. West Virginia Highlands Conservancy, Inc.* v. *West Virginia DEP*, 447 S.E.2d 920, 925 (1994).

Nevertheless, we have previously found that the word ''may,'' in subsection (g), could not be approved because it provides the WVDEP with the discretion not to use Fund moneys for water treatment. (60 FR at 51902, October 4, 1995.) Therefore, we are requiring that the State amend its program to specify that moneys from the Fund must be used, where needed, to pay for water treatment on bond forfeiture sites. Otherwise, we find that these amendments would improve the ability of the West Virginia ABS to comply with 30 CFR 800.11(e) and that they are not inconsistent with that regulatory provision. As such, we are approving them. For the reasons discussed above, we are revising 30 CFR 948.16(jjj) to reflect the statutory changes and to require the State to amend its program to specify that the Fund must be used, where needed, to pay for water treatment on bond forfeiture sites.

d. Administrative Expenses

In W. Va. Code 22–3–11(g), the State deleted a reference to Articles 2 and 4 of W. Va. Code Chapter 22. The revised provision now only allows the WVDEP to expend up to 10 percent of the total annual assets in the Fund to implement and administer the provisions of W. Va. Code 22–3 and, to the extent that they apply to the Surface Mine Board, W. Va. Code 22B–1 and 4. This revision is intended to prohibit the expenditure of special reclamation funds for administrative activities under Article 2, Abandoned Mine Lands Reclamation Act, and Article 4, Surface Mining and Reclamation of Minerals Other Than Coal.

Given the current deficit in the Fund, we encouraged the State to modify this language to limit expenditures from the Fund for administrative expenses relating only to the special reclamation program. Furthermore, as discussed in the March 20, 1986, **Federal Register** and codified at former 30 CFR 948.15(i), before making any withdrawals to cover administrative expenses unrelated to bond forfeitures, West Virginia must request and receive OSM concurrence for such withdrawals (54 FR 9649). To assist in restoring and maintaining the financial solvency of the Fund, this requirement will continue to apply to any withdrawals that are not related to bond forfeiture reclamation administrative expenses.

For the reasons discussed above, we find that these revisions to W. Va. Code 22–3–11(g) would improve the ability of the West Virginia ABS to comply with 30 CFR 800.11(e). Therefore, we are approving them.

e. Special Reclamation Tax Rates/ Financial Analysis

New W. Va. Code 22–3–11(h) increases the permanent special reclamation tax rate from 3 cents per ton of clean coal mined to 7 cents per ton of clean coal mined. This subsection also levies an additional tax of 7 cents per ton of clean coal mined for a period not to exceed 39 months. Collection of both taxes will begin on or after January 1, 2002. Coal refuse reprocessing operations that require a surface mining permit must pay the tax on the clean coal obtained by these mining methods.

Subsection 22–3–11(h) provides that the 7-cent permanent tax rate may not be reduced until the Fund has sufficient moneys to meet the State's reclamation responsibilities under W. Va. Code 22–3–11. Furthermore, this tax rate will be reviewed and, if necessary, adjusted annually by the Legislature upon recommendation of the Advisory Council (see Finding 1 above).

The increased per-ton tax assessments are intended to eliminate the existing Fund deficit and assure that the Fund will have sufficient moneys to meet the State's long-term water treatment responsibilities and complete the reclamation plans of existing and future bond forfeiture sites.

On September 7, 2001, we completed a financial analysis of a draft version of a legislative submission that would have increased the special reclamation tax rate (Administrative Record Number WV–1236). At that time, we informed the State that based on our analysis, it appeared that a proposed tax rate of 14 cents for up to 39 months and 7 cents thereafter would allow the WVDEP to eliminate the current Fund deficit and meet land reclamation and water treatment needs for several years. Our projections also indicated that, following the period of surplus, the

liabilities of the Fund would exceed its assets in about nine years and that future adjustments of the special reclamation tax rate would be necessary to maintain a positive balance to meet future land reclamation and water treatment needs.

However, as amended, the W. Va. Code provides several mechanisms intended to prevent the Fund from deteriorating to a point where its liabilities exceed its assets. First, W. Va. Code 22–3–11(h) provides that the 7-cent permanent special reclamation tax rate may not be reduced until the Fund has sufficient moneys to meet the State's reclamation responsibilities established by law. Second, W. Va. Code 22–1–17 establishes the Advisory Council to ''ensure the effective, efficient and financially stable operation of the Fund.'' If the Advisory Council fulfills its obligations, the West Virginia Legislature and the Governor will have the information and data they need to make sound decisions and effective adjustments to the special reclamation tax rate so that the Fund will maintain a positive balance to meet existing and future land and water reclamation obligations.

In addition, W. Va. Code 22–1–17(f)(6) provides that the Advisory Council must ''[s]tudy and recommend to the Legislature alternative approaches to the current funding scheme of the special reclamation fund, considering revisions which will assure future proper reclamation of all mine sites and continued financial viability of the state's coal industry.'' Because reclamation of mine sites includes meeting water treatment obligations, and because subsection 22–1–17(f)(6) provides a mechanism that, if properly implemented, could help assure proper future reclamation, we believe this provision will greatly assist in ensuring that the State is able to adequately address the Fund's long-term bond forfeiture reclamation obligations.

For the reasons discussed above, we find that the addition of W. Va. Code 22–3–11(h) would improve the ability of the West Virginia ABS to comply with 30 CFR 800.11(e). Therefore, we are approving it.

However, we are not deciding today whether the amendments satisfy the outstanding required amendment pertaining to the financial adequacy of the State's ABS at 30 CFR 948.16(lll). 30 CFR 948.16(lll) requires that the State eliminate the deficit in the ABS and ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites. Commenters on the proposed amendments have expressed concern that the Fund, as currently financed by these amendments, may not maintain a positive cash balance to meet existing and future land reclamation and water treatment needs. Commenters provided information that we wish to more fully consider in our decision as to whether the amendment fully satisfies the requirements of 30 CFR 948.16(lll). Therefore, we will publish separately a new notice in the **Federal Register**, soliciting further comments on this issue.

f. Funding Mechanism

In W. Va. Code 22–3–11(k), the State eliminated language providing that the special reclamation tax must be collected whenever the reclamation liabilities of the State exceed the accrued amount in the Fund. This provision, in effect, allowed the accrued monies in the Fund to sink below the level of its reclamation and water treatment obligations. The deletion of this provision, in concert with the addition of the new provision at subsection 22–3–11(h) that prohibits the special reclamation tax rate from being reduced until the Fund has a positive balance, together with the creation of the Advisory Council at section 22–1–17, is designed to help assure that the Fund maintains a positive balance to meet the State's land reclamation and water treatment responsibilities.

The deletion of this language from W. Va. Code 22–3–11(k) satisfies the requirement codified at 30 CFR 948.16(kkk) which provides that the State must remove the provision at (former) W. Va. Code 22–3–11(g) that allows collection of the special reclamation tax only when the Fund's liabilities exceed its assets. For the reasons discussed above, we are approving the deletion of the language and we are removing 30 CFR 948.16(kkk).

g. Implementation of Amendments

New W. Va. Code 22–3–11(n) provides that the modifications to W. Va. Code 22–3–11 will become effective upon approval by the appropriate Federal agency or official. This provision is consistent with the Federal regulations at 30 CFR 732.17(g), which provide that no changes to State laws or regulations may take effect for purposes of the State program until approved as an amendment. Therefore, we are approving this subsection.

3. W. Va. Code 22–3–12 Site-specific Bonding

This amendment deletes W. Va. Code 22–3–12(b), which contained provisions requiring the formulation of legislative rules to implement site-specific bonding requirements on an interim basis. West Virginia subsequently developed and adopted those rules in November 1992. Those rules remained in effect until April 1993, at which time the State adopted final legislative rules. Therefore, W. Va. Code 22–3–12(b) is no longer relevant.

This amendment also deletes W. Va. Code 22–3–12(f), which required the WVDEP to report every 90 days on the progress in developing and implementing the site-specific bonding requirements of W. Va. Code 22–3–12. Final legislative rules, which are codified at CSR 38–2–11.6, were adopted by the Legislature in 1993 and subsequently approved by OSM in 1995.

Neither of the deleted subsections has a Federal counterpart. We find that their deletion will not have an adverse impact on the ability of the West Virginia ABS to meet the criteria in 30 CFR 800.11(e). Therefore, we are approving their removal from the West Virginia program.

V. Summary and Disposition of Comments

Public Comments

In response to our request for comments from the public on the proposed amendment (see Section III of this document), we received comments from the WVHC; Morgan Worldwide Mining Consultants, Inc., a consultant for the WVHC; and the West Virginia Coal Association, Inc. (WVCA). Our summary and disposition of those comments appears below.

1. Criteria for Approving State Program Amendments

a. The WVHC alleged that we have no authority to approve the amendment because the amendment does not fully satisfy all outstanding requirements concerning the ABS. In particular, the WVHC argued against use of the rationale that the amendment would incrementally improve the effectiveness of the bonding system as a basis for approval of the amendment. According to the WVHC, approval of the amendment on that basis would be illegal because the ABS would remain in noncompliance with federal law. The WVHC argued that use of this rationale ''would eviscerate the requirements for an adequate alternative bonding system in 30 CFR 800.11(e) and 30 CFR 948.16(lll), and would allow incremental improvements over a long period of time that never achieved those requirements.'' The WVHC further stated that deferral of an analysis of

whether the ABS as revised by the amendment would satisfy the requirements of 30 CFR 948.16(lll) would cause an unreasonable delay in remedying the inadequacies of the ABS.

Neither SMCRA nor the Federal regulations prohibit us from approving a proposed amendment that improves a deficient State program. It would be counterproductive for us to do otherwise. As discussed in Finding 2 above, we believe the amendment will greatly assist in ensuring that the West Virginia ABS is able to comply with the Federal ABS requirements at 30 CFR 800.11(e). Therefore, we are approving it.

However, we are deferring our decision as to whether these changes allow us to remove the language at 30 CFR 948.16(lll), which requires that West Virginia submit an amendment to eliminate the ABS deficit and ''to ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites.'' As also discussed in Finding 2, we will open a new comment period to provide all interested parties with the opportunity to fully assess and comment on the impact that the amendment will have on the State's ABS and comment on whether the amendment is sufficient to justify removal of the required amendment at 30 CFR 948.16(lll). When that comment period closes, we will address all comments received in response to that comment period as well as all comments received in response to the comment period for this amendment that we have not responded to in this preamble.

b. The WVCA alleged that the amendment is inconsistent with Federal law and regulations because ''SMCRA neither addresses the need to bond for potential discharges of polluting water, nor does it create a special fund to supplement site specific bonds to aid in that reclamation.'' However, the WVCA argued that we must nonetheless approve the amendment because ''[t]he provisions of § 505(b) of SMCRA expressly provide that a State law that imposes requirements not found in SMCRA, or ones more stringent than those required by the federal program are not legally defective by reason of that inconsistency.''

We disagree with the commenter on both points. As discussed in Finding A.1.b. in the October 4, 1995, **Federal Register** (60 FR 51900, 51901–02), which concerns a different West Virginia ABS amendment, both SMCRA and the Federal regulations effectively require that the bond cover the cost of completing the reclamation plan in the event of forfeiture, including the expense of treating any postmining pollutional discharges that develop. And section 509(c) of SMCRA expressly provides for the development of alternative bonding systems such as the one in place in West Virginia. Each ABS must meet the criteria established in 30 CFR 800.11(e).

With respect to the commenter's second argument, section 505(a) of SMCRA prohibits us from superseding a State law or regulation ''except insofar as such State law or regulation is inconsistent with the provisions of this Act.'' Section 505(b) provides that we may not construe State laws or regulations that provide for more stringent land use and environmental controls as inconsistent with SMCRA. It also provides that any provision of State law or regulation ''for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.'' In other words, section 505 precludes us from superseding a State statutory or regulatory provision merely because the State provision is more stringent or has no Federal equivalent. However, contrary to the commenter's assertion, section 505 places no affirmative duty on us to approve the pertinent provision as part of the State program. Furthermore, we would not approve a State provision that has no direct SMCRA counterpart if we determined that the State provision would conflict with a SMCRA-related requirement.

2. Reclamation Cost Estimates

The WVHC stated that we misled the public and State Legislature by claiming that the amendment would solve the State's decades-long ABS deficit. Specifically, the WVHC stated that our September 7, 2001, financial analysis of the draft version of this amendment grossly misrepresents the ability of the amendment to raise sufficient revenues to make the fund solvent, and provide an adequate reserve to promptly reclaim future forfeiture sites. We disagree.

We note that the commenters on the amendment widely disagree on the effectiveness of the amendment to solve the financial problems of the ABS. However, our September 7, 2001, financial analysis represents our best estimate of the effect that the draft version of the amendment would have on the ABS, given the information available to us at the time. By giving commenters and ourselves more time, during the new comment period referenced above, to study the potential impacts of the proposed changes, we will assure a well reasoned decision as to whether the amendment fully rectifies the long-term financial problems of the ABS.

3. Requirement to Bond for Treatment of Pollutional Discharges

The WVCA stated that SMCRA does not address the need to bond for potential discharges of polluting water and that our authority to impose that requirement at 30 CFR 948.16(lll) remains in question. The WVCA noted that the National Mining Association has filed suit in Federal court in Tennessee to have a similar program requirement there declared illegal. For these reasons, the WVCA asserted, our reference to 30 CFR 948.16(lll) is inappropriate.

The litigation referred to by WVCA (*National Mining Association* v. *Norton, Civil Action No. :00–0549, E.D. Tenn.*) has no current impact on the validity of the mandate imposed by OSM at 30 CFR 948.16(lll). Indeed, the court in that litigation has not yet decided whether SMCRA requires operators to post bonds to cover the costs of pollutional discharge treatment. Moreover, for the reasons stated in that litigation, and in our response to comments in this rulemaking in Item 1.b. above, we believe that SMCRA clearly does require operators to treat pollutional discharges during and after mining and reclamation until all applicable effluent limitations and water quality standards are met, and that, therefore, bonds must be posted to cover the costs of such treatment. We have stated this principle in several documents, including our decision on a prior West Virginia amendment as announced in the October 4, 1995, **Federal Register** (60 FR 51900, 51902), and our March 31, 1997, ''Policy Goals and Objectives on Correcting, Preventing and Controlling Acid/Toxic Mine Drainage.'' For these reasons, we disagree with WVCA's assertion that the requirement in 30 CFR 948.16(lll) is inappropriate.

4. Alleged Abuse of Discretion by Failing to Grant an Extension to the Comment Period

In a letter dated November 6, 2001 (Administrative Record Number WV–1245), the WVHC requested an extension of the public comment period on the State program amendment. By letter dated November 9, 2001 (Administrative Record Number WV–1246), we denied the request. WVHC stated in its comments to this amendment that we abused our discretion by denying its request.

We declined to reopen the comment period for two reasons. One, an extension would delay our decision on

the amendment, which could result in a loss of badly needed revenues, possibly $1.9 million per month, to the Fund. Two, we agree with WVHC that, because of the complexity and the volume of material related to questions about how the amendment will affect the West Virginia program, additional time is needed by all interested parties to assess the effect of the amendment. Consequently, we have decided to open a new comment period on the broader question of whether the amendment fully satisfies the requirement at 30 CFR 948.16(lll) concerning the adequacy of the State's ABS. The new comment period will allow WVHC and all interested parties, including OSM, valuable additional time needed to thoroughly review those materials and assess whether the changes fully correct the deficiencies in the State's ABS.

Comments submitted in response to the comment solicitation for the amendment that we are approving today need not be resubmitted. All comments submitted on the current amendment that we have not addressed in this preamble will be addressed in full following the closure of the new comment period.

5. Other WVHC Comments

The WVHC stated that the proposed amendment satisfies 30 CFR 948.16(kkk), but not 30 CFR 948.16(jjj) nor (lll). We agree that the amendment satisfies 30 CFR 948.16(kkk). See Finding 2.f. However, as we state in Finding 2.c., the amendment partially satisfies 30 CFR 948.16(jjj). To fully satisfy 30 CFR 948.16(jjj), the State must also delete the 25-percent limitation for water treatment in its regulations at CSR 38–2–12.5(d).

As we state in Finding 2.e., we are deferring our decision as to whether the amendment satisfies 30 CFR 948.16(lll) regarding the adequacy of the ABS. We will open a comment period in the near future to solicit comments on whether the amendment satisfies 30 CFR 948.16(lll).

6. Morgan Worldwide Mining Consultants, Inc. Comments

All of the comments submitted by this commenter pertain to our September 7, 2001, financial analysis of the draft version of the amendment submitted by the State. As we discussed above, we will address all comments relating to our September 7, 2001, financial analysis at a later date. We will open a new comment period to ask for comments relating to 30 CFR 948.16(lll).

7. Other WVCA Comments

This WVCA expressed support for the amendment and urged us to approve the amendments. As noted above in the findings, we are approving the amendments.

The WVCA complimented the WVDEP and the State Legislature for developing comprehensive legislation that, it said, will address the question of proper funding for bond forfeiture sites. In response, we note that although we are approving the amendments, we are not deciding today the broader question of whether the amendment satisfies 30 CFR 948.16(lll), regarding the adequacy of the ABS. We will open a new comment period to ask for comments relating to 30 CFR 948.16(lll).

The remaining comments submitted by this commenter pertain to our September 7, 2001, financial analysis of the draft version of the amendment submitted by the State. We will address all comments relating to our September 7, 2001, financial analysis in a decision we will ultimately render on the broader issue of whether the amendment satisfies the requirements of 30 CFR 948.16(lll).

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Number WV–1239). The U. S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that it finds no issues or impact upon miner's health and safety with the State amendment (Administrative Record Number WV–1248).

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that West Virginia made in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA for its concurrence on this amendment.

Under 30 CFR 732.17(h)(11)(i), by letter dated September 28, 2001(Administrative Record No. WV–1239), we requested comments from EPA on this amendment (Administrative Record Number WV–1238). The EPA responded by letter dated November 13, 2001 (Administrative Record Number WV–1247). The EPA commended the State for eliminating the 25-percent expenditure limitation for water treatment. As we noted in Finding 2.c. above, the deletion of the 25-percent limitation only partially satisfies the required program amendment codified at 30 CFR 948.16(jjj). The State still needs to revise its regulations to conform with the statutory changes.

The EPA also recommended eliminating the 39-month limit on the temporary tax. According to the EPA, this restriction could result in insufficient funds for possible future acid mine drainage treatment needs. The EPA stated that the State Legislature would always have the option on an annual basis to adjust the tax rate downward when the Fund is determined to have sufficient resources.

As discussed in Finding 2.e. above, the legislation provides that the permanent 7-cent tax rate ''may not be reduced until the special reclamation fund has sufficient moneys to meet the reclamation responsibilities. * * *''

In addition, as noted in that finding, the amendment provides an appropriate mechanism, via the Advisory Council, to effectively manage and monitor the financial condition of the Fund and the adequacy of the special reclamation tax. Therefore, we are approving the amendment. However, we plan to solicit further comments to determine if the State's ABS provides for the amount of financial resources and kinds of assurances that EPA feels is necessary if the State is to meet long-term water treatment needs at bond forfeiture sites.

VI. OSM's Decision

Based on the above findings, we are approving the amendment submitted by West Virginia on September 24, 2001. In addition, we are removing the required program amendment at 30 CFR 948.16(kkk).

We are also revising 30 CFR 948.16(jjj) to reflect the statutory changes and to require the State to amend its program to specify that moneys from the Fund must be used, where needed, to pay for water treatment on bond forfeiture sites. We are also taking this opportunity to update obsolete information at 30 CFR 948.10 and 948.20. The changes to 30 CFR 948.10 and 948.20 are technical revisions that do not require public comment.

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. Our regulations at 30 CFR 732.17(h)(12)

specify that all decisions approving or disapproving amendments will be published in the **Federal Register** and that they will be effective upon publication, unless the notice specifies a different date. We are making this final rule effective immediately to expedite the State program amendment process and to assist the State in making its program conform with the Federal standards as required by the Act.

VII. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 2001.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 948 is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.10 is revised to read as follows:

§ 948.10 State regulatory program approval.

The West Virginia program, as submitted on March 3, 1980, as clarified on July 16, 1980, and as resubmitted on December 19, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date and continuing until July 11, 1985, the Department of Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 11, 1985, the Department of Energy was deemed the regulatory authority

pursuant to the program transfer provisions of Enrolled Committee Substitute for House Bill 1850, as signed by the Governor of West Virginia on May 3, 1985. Beginning on October 16, 1991, the Division of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 217 that was signed by the Governor on October 25, 1991. On December 3, 1991, OSM found that it was not necessary to amend the State program to effect the redesignation of the regulatory authority from the Division of Energy to the Division of Environmental Protection (58 FR 42904, August 12, 1993). Beginning on April 14, 2001, the Department of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 2218. The bill, which was signed by the Governor on April 30, 2001, transferred programs and redesignated the Division of Environmental Protection as the Department of Environmental Protection within the executive branch. Copies of the conditionally approved program, as amended, are available at:

(a) Office of Surface Mining, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301–2816. Telephone: (304) 347–7158.

(b) West Virginia Department of Environmental Protection, Division of Mining and Reclamation, 10 McJunkin Road, Nitro, West Virginia 25143–2506. Telephone: (304) 759–0510.

3. Section 948.15 is amended by adding a new entry to the table in chronological order by ''Date of final publication'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
*	*	* * * * *
September 24, 2001	December 28, 2001	W. Va. Code 22–1–17; 22–3–11(a), (c), (d), (g) through (n); 22–3–12(a) through (f).

4. Section 948.16 is amended by removing and reserving paragraph (kkk) and revising paragraph (jjj) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(jjj) By March 28, 2002, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR 38–2–12.5(d) to remove the 25-percent limitation on the expenditure of funds for water treatment or to otherwise provide for the treatment of polluted water discharged from all bond forfeiture sites. In addition, the State must amend its program to specify that moneys from the Special Reclamation Fund must be used, where needed, to pay for water treatment on bond forfeiture sites.

* * * * *

5. Section 948.20 is revised to read as follows:

§ 948.20 Approval of State abandoned mine land reclamation plan.

The West Virginia Abandoned Mine Reclamation Plan as submitted on October 29, 1980, and as amended on December 12, 1980, is approved effective February 23, 1981. Copies of the approved plan are available at the following locations:

(a) Office of Surface Mining, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301–2816. Telephone: (304) 347–7158.

(b) West Virginia Department of Environmental Protection, Abandoned Mine Lands and Reclamation, 10 McJunkin Road, Nitro, West Virginia 25143–2506. Telephone: (304) 759–0521.

[FR Doc. 01–31612 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–094–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; opening of public comment period and opportunity for public hearing on an amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) are announcing the opening of a public comment period and an opportunity for public hearing or meeting on the effectiveness of a recently approved amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to satisfy the Federal requirements regarding an alternative bonding system (ABS). We announced approval of an amendment to the West Virginia program concerning the State's ABS in a final rule document that appears elsewhere in this **Federal Register** issue. The amendment consisted of changes to the Code of West Virginia (W. Va. Code) as contained in Enrolled Senate Bill 5003, and: established the Special Reclamation Fund Advisory Council; increased the special reclamation tax rate to provide additional revenue for the reclamation of bond forfeiture sites; and deleted language that limited expenditures from the State's ABS for water treatment.

We are opening this comment period to provide all interested parties additional time to review the relevant materials and to submit comments on whether the State amendment, as submitted on September 24, 2001, and approved by OSM elsewhere in this **Federal Register** issue fully resolves all ABS deficiencies and satisfies the required program amendment codified at 30 CFR 948.16(lll). That requirement provides that the State must eliminate the deficit in its ABS and ensure that sufficient money will be available in the future to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites. We are seeking comment on whether the State's amendment provides a permanent, long-term solution to the State's ABS problems.

Comments previously submitted in response to our October 24, 2001 (66 FR 53749), **Federal Register** notice on the State's amendment need not be resubmitted.

This document gives the times and locations that the State's amendment and other relevant documents are available for your inspection, the comment period during which you may submit written comments on whether the amendment fully satisfies all outstanding requirements concerning West Virginia's ABS, and the procedures that we will follow for the public hearing or meeting, if one is requested.

DATES: We will accept written comments until 4:30 p.m. (local time), on March 28, 2002. If requested, we will hold a public hearing or meeting on the amendment on March 25, 2002. We will accept requests to speak at the hearing until 4:30 p.m. (local time), on March 18, 2002.

ADDRESSES: You may mail or hand-deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the recently approved amendment, a listing of any scheduled public hearings, and all written comments received in response to both this document and the recently approved amendment at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the State's amendment, our **Federal Register** notice approving the amendment, our Financial Analysis on the amendment, and comments submitted in response to the State's amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510. The approved amendment is posted at the Division of Mining and Reclamation's Internet Web page: *http://www.dep.state.wv.us/mr.*

In addition, you may review copies of the approved amendment, our **Federal Register** notice approving the amendment, our Financial Analysis on the amendment, and comments submitted in response to the State's amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801,Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Background on West Virginia's Alternative Bonding System (ABS)

You can find background information on West Virginia's ABS in Section II of the final rule document that appears elsewhere in this **Federal Register** issue.

III. Description of the Amendment and Issues Being Considered

By letter dated September 24, 2001 (Administrative Record Number WV–1238), the WVDEP sent us a proposed amendment to its program under SMCRA. The amendment was submitted in response to our 30 CFR part 733

notification of June 29, 2001 (Administrative Record Number WV–1218). The program amendment added new W. Va. Code section 22–1–17 which established the Special Reclamation Fund Advisory Council (Advisory Council). The amendment also revised the provisions of W. Va. Code sections 22–3–11 by increasing the special reclamation tax rate from 3 cents to 14 cents per ton of clean coal mined for 39 months and reducing it to 7 cents thereafter, and modified section 22–3–12 by deleting certain site-specific bonding provisions.

We announced receipt of the amendment on October 24, 2001 (66 FR 53749), and we approved the amendment in the final rule document that appears elsewhere in this **Federal Register** issue.

Why We Are Asking For Your Comments Now

In our approval of the State's amendment elsewhere in this **Federal Register** issue, we announced that we were deferring our decision on the broader question of whether the amendment fully satisfies the requirement at 30 CFR 948.16(lll), concerning the adequacy of the State's ABS. We need the additional time to fully evaluate the long-term solvency of the State's ABS. This is a complex issue requiring not only a review of known reclamation costs at existing bond forfeiture sites, but also a projection of future reclamation costs associated with perpetual water treatment and additional forfeitures. It also requires an evaluation of ABS revenue estimates, given the increased special reclamation tax rate, and of whether the new rate is sufficient to meet existing and future bond forfeiture reclamation demands.

As provided by State law, the Advisory Council is required to study and recommend to the Legislature alternative approaches to the current funding scheme of the ABS. In addition, the Advisory Council must study the effectiveness, efficiency and financial stability of the ABS with an emphasis on the development of a financial system that ensures the long-term stability of the State's special reclamation program. We are interested in receiving public comments on whether the State's current ABS, with its reliance on a coal production tax and a monitoring board, will fully satisfy the Federal requirement at 30 CFR 948.16(lll), which provides that the State must eliminate the deficit in its ABS and ensure that sufficient money will be available in the future to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites.

Other related issues that must be considered and for which we are seeking public comment include, but are not limited to: accuracy of bond forfeiture rates; accuracy of land reclamation and water treatment cost estimates; accuracy of State and Federal bond forfeiture acid mine drainage (AMD) inventories; accuracy of coal production projections; compliance with reclamation plans; timeliness of bond forfeiture reclamation and bond forfeiture collections; adequacy of the increased special reclamation tax rate; and adequacy and effectiveness of bond forfeiture reclamation.

Additional time is also needed by all interested parties, including OSM, to complete a comprehensive review of all documents that have been generated as a result of this amendment and submitted in response to our earlier request for public comments. These comments, together with any additional comments that we may receive in response to this notice, will help us determine if the State's ABS amendment fully satisfies the outstanding required amendment at 30 CFR 948.16(lll), or if additional measures are needed by the State to ensure consistency with Federal ABS requirements.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the State's September 24, 2001, amendment that we have approved and appears elsewhere in this **Federal Register** issue renders the West Virginia ABS sufficient and fully satisfies the requirements of 30 CFR 948.16(lll). We are interested in receiving additional comments on those bonding related issues identified above in Section III to assist us in determining whether or not the State's amendment fully satisfies the outstanding required amendment at 30 CFR 948.16(lll). Comments previously submitted in response to our October 24, 2001 (66 FR 53749), **Federal Register** notice on the State's amendment need not be resubmitted.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendation(s). In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Charleston Field Office.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during our normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their names or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:30 p.m. (local time), on March 18, 2002. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

If you are disabled and need special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of the meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

V. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse affect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 2001.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 01–31613 Filed 12–27–01; 8:45 am]

BILLING CODE 4310–05–P

Federal Register

Friday,
December 28, 2001

Part IV

Department of the Treasury

31 CFR Part 104

Departmental Offices; Counter Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks; Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 104

RIN 1505–AA87

Departmental Offices; Counter Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing a proposed rule to implement new provisions of the Bank Secrecy Act that: Prohibit certain financial institutions from providing correspondent accounts to foreign shell banks; require such financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to indirectly provide banking services to foreign shell banks; require certain financial institutions that provide correspondent accounts to foreign banks to maintain records of the ownership of such foreign banks and their agents in the United States designated for service of legal process for records regarding the correspondent account; and require the termination of correspondent accounts of foreign banks that fail to turn over their account records in response to a lawful request of the Secretary of the Treasury (Secretary) or the Attorney General of the United States (Attorney General).

DATES: Written comments on the proposed rule may be submitted to the Treasury Department on or before February 11, 2002.

ADDRESSES: Submit comments (preferably an original and three copies) to Office of the Assistant General Counsel (Enforcement), Attention: Official Comment Record, Room 2000, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library by advance arrangement. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Gary W. Sutton, Senior Banking Counsel, Office of the Assistant General Counsel (Banking & Finance), (202) 622–1976, or William Langford, Attorney-Advisor, Office of the Assistant General Counsel (Enforcement), (202) 622–1932 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which is codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Two of these provisions become effective on December 26, 2001.

First, section 313(a) of the Act adds a new subsection (j) to 31 U.S.C. 5318 that prohibits a ''covered financial institution'' from providing ''correspondent accounts'' in the United States to foreign banks without a physical presence in any country (shell banks) and requires those financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to indirectly provide banking services to foreign shell banks. The Department of the Treasury expects that covered financial institutions, as required by 31 U.S.C. 5318(j), will immediately terminate all correspondent accounts with any foreign bank that it knows to be a shell bank that is not a regulated affiliate as defined in the proposed rule, and will terminate any correspondent account with a foreign bank that it knows is being used to indirectly provide banking services to a foreign shell bank.

Second, section 319(b) of the Act adds a new subsection (k) to 31 U.S.C. 5318 that requires any covered financial institution that provides a correspondent account to a foreign bank to maintain records of the foreign bank's owners and agent in the United States designated to accept service of legal process for records regarding the correspondent account. Subsection (k) also authorizes the Secretary and the Attorney General to issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and to request records relating to such account, including records maintained outside the United States relating to the deposit of funds into the foreign bank. If a foreign bank fails to comply with or contest the summons or subpoena, any covered financial institution with which the foreign bank maintains a correspondent account must terminate the account upon notice from the Secretary or the Attorney General.

Under the Act, Treasury is authorized to interpret and administer these provisions. On November 20, 2001, Treasury issued Interim Guidance to banks, savings associations, and other depository institutions to assist them in meeting their compliance obligations under sections 5318(j) and (k).[1] The Interim Guidance, published in the **Federal Register** on November 27, 2001 (66 FR 59342), included definitions of key terms in sections 5318(j) and (k) and a model certification that depository institutions may use as an interim means to assist them in meeting their obligations related to dealing with foreign shell banks under section 5318(j) and recordkeeping under section 5318(k). In issuing the Interim Guidance, Treasury stated that it may be relied upon by financial institutions until superseded by regulations or a subsequent notice. Treasury now is proposing to codify the Interim Guidance, with some modifications, as regulatory standards, and proposing standards applicable to securities brokers and dealers.

When issuing the Interim Guidance, Treasury deferred addressing the compliance obligations of securities brokers and dealers with respect to the requirements of sections 5318(j) and (k), because the Act requires Treasury to define by regulation, after consultation with the Securities and Exchange Commission (SEC), the types of accounts maintained by brokers and dealers for foreign banks that are similar to correspondent accounts that depository institutions maintain for foreign banks. As further discussed below, Treasury is proposing to apply the requirements of sections 5318(j) and (k)(3)(B)(i) to brokers and dealers in the same manner that they apply to other covered financial institutions.

The proposed rule also carries forward from the Interim Guidance, with some modifications, the model certification that covered financial institutions may use to assist them in meeting the requirements of sections 5318(j) and (k). Use of the model certification (Appendix A to part 104) will provide a covered financial institution with a safe harbor for

[1] Treasury issued the interim guidance after consultation with the Department of Justice, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the staff of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, and the Securities and Exchange Commission. Treasury also consulted with these agencies in preparing this proposed rule.

purposes of compliance with those sections. Treasury is proposing that covered financial institutions must verify the information provided by a foreign bank, or otherwise relied upon for purposes of sections 5318(j) and (k), every two years or at any time a covered financial institution has reason to believe that the previously provided information is no longer accurate. The proposed rule also includes a model recertification (Appendix B to part 104), which also will provide a covered financial institution with a safe harbor in connection with the verification of previously provided information.

Proposed section 104.40(f) provides special rules and safe harbors for a covered financial institution that, consistent with the Interim Guidance or this notice of proposed rulemaking, requests information from a foreign bank before the effective date of the final rule and receives such information not later than the date that is 90 days after the publication of the final rule. Such information will be deemed to satisfy the covered financial institution's obligations for purposes of the final rule until such time as the information must be verified.

As an administrative matter, the proposed rule also establishes a new part 104 of title 31 of the Code of Federal Regulations. Part 104 eventually will include other regulations implementing the anti-money laundering provisions of the Act for which Treasury is authorized or required to issue regulations. At this point, most of part 104 has been reserved for these future regulations.

II. Description of the Proposed Rule

A. Limitations on Correspondent Accounts for Foreign Shell Banks

Section 5318(j) provides that a ''covered financial institution'' shall not establish, maintain, administer, or manage a ''correspondent account'' in the United States for, or on behalf of, a shell bank that is not a regulated affiliate (as described below). In addition, a covered financial institution must take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by the covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank that is not a regulated affiliate.

1. What Is a Covered Financial Institution?

For purposes of section 5318(j), the term ''covered financial institution'' is defined as: (1) Any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); (2) a commercial bank or trust company; (3) a private banker; (4) an agency or branch of a foreign bank in the United States; (4) a credit union; (5) a thrift institution; or (6) a broker or dealer registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). *See* 31 U.S.C. 5318(j)(1), 5312(a)(2). The proposed rule incorporates this statutory definition. Covered financial institutions include insured banks organized in U.S. territories, Puerto Rico, Guam, American Samoa, and the Virgin Islands, and corporations organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

2. What Is a Correspondent Account?

Section 5318(j) applies to any ''correspondent account'' established, maintained, administered, or managed by the covered financial institution in the United States for a foreign bank. For purposes of section 5318(j), ''correspondent account'' is defined with respect to banking institutions as ''an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.'' *See* 31 U.S.C. 5318A(e)(1)(B). The Act also defines the term ''account'' as ''a formal banking or business relationship established to provide regular services, dealings, and other financial transactions [and] includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.'' *See* 31 U.S.C. 5318A(e)(1)(A).

Treasury, after consultation with the SEC, is required under the Act to define the types of accounts that come within the definition of ''correspondent account'' for purposes of securities brokers' and dealers' compliance with section 5318(j). *See* 31 U.S.C. 5318A(e)(2). In addition, Treasury may further define the terms ''correspondent account'' and ''account'' as the Secretary deems appropriate. *See* 31 U.S.C. 5318A(e)(4). Treasury intends to maintain parity in treatment between accounts provided to foreign banks by banks and broker-dealers, and to treat functionally equivalent accounts, whether maintained by banks or broker-dealers, in the same manner.

The statutory definition of ''correspondent account'' is broadly worded; it is not limited to any particular type of account. The proposed rule incorporates the statutory definition of ''correspondent account.'' It includes, for example, any account that falls within the definition of ''transaction account'' under Regulation D of the Board of Governors of the Federal Reserve System (Federal Reserve).[2] It also includes clearing and settlement accounts (which may also fall within the definition of ''transaction account''). Such accounts are typically used by foreign banks for remittance of funds in settlement of U.S. dollar transactions with parties other than the U.S. bank at which the account is maintained. In addition, foreign banks maintain fiduciary accounts with U.S. banks for the benefit of such foreign banks or their customers, including custody and escrow accounts. U.S. banks also establish time deposit accounts for foreign banks that are used by foreign banks primarily as funding mechanisms, as well as money market deposit accounts (''MMDAs'') that share limited use for transactions processing. In addition, U.S. banks engage in transactions with foreign banks in securities, derivatives, repurchase agreements, foreign exchange, and other instruments. To the extent that these transactions involve an account, they would be covered by the definition of ''correspondent account.''

In light of the broad statutory definitions of ''correspondent account'' and ''account'' for banking institutions, Treasury is proposing to apply the same definition for purposes of the types of broker-dealer accounts that are covered by section 5318(j). Thus, under the proposed rule, brokers and dealers must comply with section 5318(j) with respect to any account they provide in the U.S. to a foreign bank that permits the foreign bank to engage in securities transactions, funds transfers, or other financial transactions through that account. Such accounts would include, for example, the following: (1) Accounts to purchase, sell, lend or otherwise hold securities, either in a proprietary account or an omnibus account for trading on behalf of the foreign bank's customers on a fully disclosed or non-disclosed basis; (2) prime brokerage accounts that consolidate trading done at a number of firms; (3) accounts for trading foreign currency; (4) various forms of custody accounts for the foreign bank and its customers; (5) over-the-counter derivatives accounts; and (6) futures accounts to purchase futures, which would be maintained primarily by broker-dealers that are dually registered as futures commission merchants.

Treasury requests comments on the breadth of the definition of

[2] 12 CFR 204.2(e).

''correspondent account'' as applied to accounts maintained by depository institutions and brokers and dealers for foreign banks. Comments are requested on the extent to which different types of accounts may be used to provide financial services directly or indirectly to foreign shell banks. Comments are requested on the extent to which different types of accounts may be used to facilitate money laundering, terrorist financing, or other criminal transactions, including the extent to which different types of accounts may be used to disguise the nature, location, source, ownership, or control of the proceeds of unlawful activity. Treasury also seeks comments on whether particular types of accounts pose so little vulnerability to criminal transactions as to merit exclusion from the broad definition of ''correspondent account,'' together with the reasons therefor. Comments also are requested on the adverse business implications for covered financial institutions, if any, of adopting a broad definition of ''correspondent account'' for purposes of section 5318(j).

Covered financial institutions may through their foreign branches establish, maintain, administer, or manage correspondent accounts for foreign banks. Because these foreign branches legally are part of covered financial institutions, Treasury considers these correspondent accounts to be maintained in the United States for purposes of section 5318(j). In addition, Treasury has broad authority under the Act to establish anti-money laundering standards for U.S. financial institutions and their foreign branches. *See* 31 U.S.C. 5318(h). Therefore, the proposed rule applies to any correspondent accounts provided by a foreign branch of a covered financial institution to a foreign bank. Treasury requests comments on the extent to which such accounts are in fact established, maintained, administered or managed in the United States, as well as whether imposing this requirement on foreign branches of covered financial institutions is commensurate with the size, location, and activities of such institutions.

3. What Is a Foreign Bank?

The Act does not define ''foreign bank.'' For purposes of the proposed rule, ''foreign bank'' is any organization that (1) Is organized under the laws of a foreign country, (2) engages in the business of banking, (3) is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations, (4) and receives deposits in the regular course of its business. A ''foreign bank'' also includes a branch of a foreign bank located in a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands. A ''foreign bank'' does not include an agency or branch of a foreign bank located in the United States or an insured bank organized in a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands. Those entities are ''covered financial institutions'' under the statute. In addition, a foreign central bank or foreign monetary authority that functions as a central bank is not a ''foreign bank.'' Comments are requested on whether the term ''foreign bank'' should be defined more specifically.

4. What Is a Foreign Shell Bank?

For purposes of section 5318(j), a foreign shell bank is a foreign bank without a physical presence in any country. *See* 31 U.S.C. 5318(j)(1). ''Physical presence'' means a place of business that is maintained by a foreign bank and is located at a fixed address, other than solely a post office box or an electronic address, in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank: (1) Employs one or more individuals on a full-time basis; (2) maintains operating records related to its banking activities; and (3) is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities. *See* 31 U.S.C. 5318(j)(4)(B).

5. What Is a Regulated Affiliate?

The limitations on the direct and indirect provision of correspondent accounts to foreign shell banks do not apply to a foreign shell bank that is a ''regulated affiliate.'' A regulated affiliate is a foreign shell bank that: (1) Is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and (2) is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank. An affiliate is a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank. *See* 31 U.S.C. 5318(j)(3).

6. What Steps Must a Covered Financial Institution Take To Comply With Section 5318(j)?

In order to comply with the limitations on the direct and indirect provision of correspondent accounts to foreign shell banks, a covered financial institution must ensure that each foreign bank to which it provides a correspondent account is not a shell bank, and take reasonable steps to ensure that correspondent accounts provided to such foreign banks are not being used to indirectly provide banking services to foreign shell banks. Although the proposed rule does not prescribe the manner in which a covered financial institution must satisfy its obligations under section 5318(j), it does provide a safe harbor if a covered financial institution uses the model certifications in Appendix A and Appendix B for these purposes. A covered financial institution that does not obtain, from a foreign bank or otherwise, the information necessary to fulfill its obligations under section 5318(j) within the prescribed time periods must terminate its correspondent account relationship with the concerned foreign bank.

The Department of the Treasury expects that covered financial institutions, as required by 31 U.S.C. 5318(j), will immediately terminate all correspondent accounts with any foreign bank that it knows to be a shell bank that is not a regulated affiliate, and will terminate any correspondent account with a foreign bank that it knows is being used to indirectly provide banking services to a foreign shell bank. Because some correspondent accounts, at the time of termination, may contain open securities or futures positions, a covered financial institution may exercise its commercially reasonable discretion in liquidating such open positions (including, but not limited to, following its ordinary practices upon the default of a client). However, a covered financial institution must take reasonable steps to ensure that an account that is in the process of being terminated is not permitted to establish new positions.

B. Recordkeeping and Termination Requirements for Correspondent Accounts of Foreign Banks

Under 31 U.S.C. 5318(k), as added by section 319(b) of the Act, any covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying: (1) the owner(s) of such foreign bank; and (2) the name and address of a person (as defined in 31 CFR 103.11(z)) who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

Section 5318(k) authorizes the Secretary and the Attorney General to issue a summons or subpoena to any

foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

A covered financial institution must terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed either: (1) to comply with the summons or subpoena issued; or (2) to initiate proceedings in a United States court contesting such summons or subpoena. *See* 31 U.S.C. 5318(k)(3)(C).

If a covered financial institution fails to terminate the correspondent relationship upon receiving notice from the Secretary or the Attorney General, it is subject to a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated. A covered financial institution is not liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with section 5318(k).

1. What Is a Covered Financial Institution?

There is no statutory definition of ''covered financial institution'' for purposes of section 5318(k). For the following reasons, Treasury believes that ''covered financial institution'' in section 5318(k) should be read to have the same meaning as the identical term in section 5318(j), which includes brokers and dealers.

Both sections 5318(j) and (k) deal with anti-money laundering efforts related to correspondent relationships between U.S. financial institutions and foreign banks. Congress expressly included brokers and dealers in the category of ''covered financial institutions'' under section 5318(j) and required Treasury to identify the types of accounts that brokers and dealers maintain for foreign banks that are similar to correspondent accounts. In addition, Congress provided that the same definition of ''correspondent account'' applies in both sections 5318(j) and (k).

Excluding brokers and dealers from the category of ''covered financial institutions'' subject to the recordkeeping requirements and account termination safeguards under section 5318(k) would be inconsistent with the statutory scheme and would not reflect a comprehensive approach to implementing the Act's anti-money laundering requirements. In addition, Treasury has broad authority under the Act to establish anti-money laundering standards for securities brokers and dealers. *See* 31 U.S.C. 5318(h). Consequently, under the proposed rule, brokers and dealers are covered financial institutions subject to section 5318(k).

2. What Accounts Are Covered?

Section 5318(k) applies to ''correspondent accounts,'' which has the same meaning as in section 5318(j), *i.e.,* an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution. In light of the Act's use of the same definition of correspondent account in both sections 5318(j) and (k), Treasury believes that both sections should be read as coextensive in the types of accounts to which they apply.

3. Who Is an Owner of a Foreign Bank?

Section 5318(k) does not define ''owner'' for purposes of the requirement that a covered financial institution maintain records of the owners of foreign banks to which it provides correspondent accounts. Treasury is proposing to define an ''owner'' as any person who is a ''large direct owner,'' an ''indirect owner,'' and a ''reportable small direct owner.'' The proposed definition of each of these terms is discussed below. For purposes of these definitions, ''person'' means any individual, bank, corporation, partnership, limited liability company, or any other legal entity, except that members of the same family [3] shall be considered one person, and each family member who has an ownership interest in the foreign bank must be identified. ''Voting shares or other voting interests'' means shares or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions).

The definition of ''owner'' applies only with respect to the provisions of section 5318(k), which are designed to facilitate the service of legal process. No inference may be drawn as to the applicability of this definition to other provisions of the Act, including the enhanced due diligence requirements of 31 U.S.C. 5318(i) (as added by section 312 of the Act), which sets forth different standards for reporting ownership information.

Foreign banks that maintain U.S. branches or agencies are required by the Federal Reserve to file an Annual Report (FR Y–7), which lists the foreign bank's agent for service of process in the U.S. and information on the ownership of the foreign bank. The current FR Y–7 generally requires the reporting of persons who own, directly or indirectly, 5 percent or more of any class of the voting shares of a foreign bank. A U.S. branch or agency of a foreign bank or other covered financial institution may use the relevant portions of a current FR Y–7 filed by the foreign bank to meet its recordkeeping obligations under section 5318(k) with respect to a correspondent account the U.S. branch or agency or other covered financial institution maintains for the foreign bank.

The definition of ''owner'' in the proposed rule is intended to minimize reporting burdens by focusing on those persons who are likely to have the ability to exert influence over the operations of a foreign bank. The proposed definition necessarily reflects the complexity of ownership relationships, including those that can be used or structured to obscure controlling or influential owners of a foreign bank. The Department recognizes that the reporting regime of FR Y–7 is significantly simpler that the proposed definition, but believes that it would be more burdensome for foreign banks. Comments are specifically requested concerning whether the Treasury should use the ownership criteria of FR Y–7 in lieu of the definition of ''owner'' in the proposed rule.

a. Who Is a Small Direct Owner of a Foreign Bank?

A ''small direct owner'' of a foreign bank is a person who owns, controls, or has power to vote less than 25 percent of the voting shares or other voting interests of the foreign bank. The identity of a small direct owner is not subject to reporting unless such person is a ''reportable small direct owner.''

A ''reportable small direct owner'' is: (1) Each of two or more small direct owners that in the aggregate own 25 percent or more of any class of the voting shares or other voting interests of the foreign bank and are majority-owned by the same person, or by a chain of

[3] The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, second cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing.

majority-owned persons; or (2) each of any one or more small direct owners that are majority-owned by another small direct owner and in the aggregate all such small direct owners own 25 percent or more of the voting shares or other voting interests of the foreign bank. In determining who is a ''reportable small direct owner,'' a small direct owner that owns or controls less than 5 percent of the voting shares or other voting interests of the foreign bank need not be taken into account.

b. Who Is a Large Direct Owner of a Foreign Bank?

A ''large direct owner'' of a foreign bank is a person who: (1) Owns, controls, or has power to vote 25 percent or more of any class of voting shares or other voting interests of the foreign bank; or (2) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of the foreign bank. A covered financial institution must obtain the identity of each large direct owner of a foreign bank.

c. Who Is an Indirect Owner of a Foreign Bank?

An indirect owner is any person in the ownership chain of any large direct owner or a reportable small direct owner who is not majority-owned by another person. In determining who is an ''indirect owner,'' a small direct owner that owns or controls less than 5 percent of the voting shares or other voting interests of the foreign bank need not be taken into account. A covered financial institution must obtain the identity of each indirect owner of a foreign bank.

For example, if any two or more small direct owners of a foreign bank (1) in the aggregate own, control, or have power to vote 25 percent or more of any class of voting securities or other voting interests of the foreign bank, and (2) are majority-owned by the same person, or by the same chain of majority-owned persons, the ''indirect owner'' is any person in the ownership chain of those small direct owners who is not majority-owned by another person.

Similarly, if one or more small direct owners of a foreign bank is majority-owned by another small direct owner and in the aggregate all such small direct owners own, control, or have power to vote 25 percent or more of any class of voting shares or other voting interests of the foreign bank, the ''indirect owner'' is (1) the small direct owner that is the majority-owner of the other small direct owner(s), *or* (2) any person in the ownership chain of the small direct owner that is the majority-owner of the other small direct owner(s) that is not majority-owned by another person.

Examples of reportable owners.

Example 1. FB–1 is a foreign bank. Voting securities of FB–1 are owned by Person C (15 percent), Person D (35 percent), Person E (10 percent), Person F (20 percent), and Person G (20 percent).

Persons C and G are both majority-owned by Person X, which is majority-owned by Person Y, which is majority-owned by Person Z, which is not majority-owned by another person.

Person D is majority-owned by Person V, which is majority-owned by Person W, which is not majority-owned by another person.

Persons E and F are not owned by another person.

Persons C, E, F, and G are small direct owners because each owns less than 25 percent of the voting securities of FB–1. The identities of Persons C and G are reportable small direct owners because: (1) In the aggregate they own more than 25 percent of the voting securities of FB–1; and (2) they are majority-owned by the same indirect owner Z. The identities of Persons E and F are not subject to reporting.

Person D is a large direct owner because it owns 25 percent or more of the voting securities of FB–1. The identity of Person D is subject to reporting.

Person W is an indirect owner because it is a majority-owner of Person V, which is a majority-owner of Person D. The identity of Person W is subject to reporting. The identity of Person V is not subject to reporting.

Person Z is an indirect owner because it is a majority-owner of Person Y, which is a majority-owner of Person X, which is a majority-owner of Persons C and G, which are small direct owners that in the aggregate own 25 percent or more of the voting securities of FB–1. The identity of Person Z is subject to reporting. The identities of Persons Y and X are not subject to reporting.

Example 2. FB–2 is a foreign bank. Voting securities of FB–2 are owned by Person K (20 percent) and Person L (10 percent). Person K is majority-owned by Person L. Person L is not majority-owned by another person. Persons K and L are small direct owners. However, Person L is also an indirect owner subject to reporting because: (1) Person L is a majority-owner of Person K; and (2) in the aggregate Persons K and L own more than 25 percent of the voting securities of FB–2. Person K is a reportable small direct owner for the same reason.

Example 3. Same facts as in Example 2, except that Person L is majority-owned by Person M, who is majority-owned by Person N, who is not majority-owned by another person. In this example, Person N is an indirect owner subject to reporting because Person N is the person in the ownership chain of small direct owner Person L and is not majority-owned by another person. Persons K and L are reportable small direct owners. The identity of Person M is not subject to reporting.

Example 4. FB–3 is a foreign bank. 30 percent of the voting securities of FB–2 are owned by 6 members of the same family (as defined in the proposed rule) in amounts ranging from 2 percent to 10 percent. The 6 family members are considered to be one person who is a large direct owner of the bank. The identity of each of the 6 family members is subject to reporting. Other family members who do not own voting securities in FB–3 are not subject to reporting.

4. What Steps Must a Covered Financial Institution Take To Comply With Section 5318(k)(3)(B)(i)?

Although the proposed rule does not prescribe the manner in which a covered financial institution must obtain information concerning the identity of owners of foreign banks and their agents in the U.S. authorized to receive service of legal process, it does provide a safe harbor if a covered financial institution uses the model certifications in Appendix A and Appendix B for these purposes. A covered financial institution that does not obtain, from a foreign bank or otherwise, the information necessary to fulfill its obligations under section 5318(k)(3)(B)(i) must terminate its correspondent account relationship with the concerned foreign bank.

III. Submission of Comments

All comments will be available for public inspection and copying, and no material in any comments, including the name of any person submitting comments, will be recognized as confidential. Material not intended to be disclosed to the public should not be submitted.

IV. Regulatory Flexibility Act

It is hereby certified that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities. Covered financial institutions that are subject to the recordkeeping requirements in the statute and the proposed rule tend to be large institutions. Moreover, any economic consequences that might result from the prohibition on dealings with foreign shell banks, or from the failure of a foreign bank to provide the information necessary for a covered financial institution to fulfill its recordkeeping obligations, flow directly from the underlying statute. Accordingly, the analysis provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

V. Executive Order 12866

This proposed rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

VI. Paperwork Reduction Act

The collections of information contained in Appendix A to proposed 31 CFR part 104 rulemaking have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and assigned OMB Control Number 1505–0184.

The collection of information contained in Appendix B to proposed 31 CFR part 104 and the recordkeeping requirement in proposed 31 CFR 104.40(e) have been submitted to OMB for review in accordance with the requirements of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments concerning the collection of information should be directed to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, DC 20503, and to the Department of the Treasury at the address previously specified in the **ADDRESSES** portion of this preamble. Any such comments should be submitted not later than February 26, 2002.

Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of the Department of the Treasury, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information (see below), which was developed in part on the basis of discussions with industry representatives. The Department is particularly interested in comments concerning the number of covered financial institutions and the number of foreign banks for which correspondent accounts are maintained.

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

This information will enable financial institutions to comply with the requirements of sections 31 U.S.C. 5318(j) and (k), and will be used by Federal agencies to verify compliance by covered financial institutions with these provisions. The respondents are foreign banks that establish or maintain correspondent accounts with U.S. financial institutions. The reporting of this information by foreign banking institutions is voluntary; however failure to provide the information may preclude the establishment or the continuation of correspondent accounts with U.S. financial institutions. The recordkeepers are covered financial institutions. The recordkeeping requirement concerning owners and agents of foreign banks is required by statute.

Estimated total annual reporting burden for Appendix B: 45,000 hours.

Estimated number of respondents (foreign banks): 9,000.

Estimated average annual reporting burden per respondent: 5 hours.

Estimated frequency of responses: Once every 2 years.

Estimated total annual recordkeeping burden: 18,000 hours.

Estimated number of recordkeepers (covered financial institutions): 2000.

Estimated average annual recordkeeping burden per recordkeeper: 9 hours.

List of Subjects in 31 CFR Part 104

Banks, banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Dated: December 19, 2001.

David D. Aufhauser,

General Counsel.

Authority and Issuance

For the reasons set forth in the preamble, the Treasury is proposing to amend 31 CFR subtitle B, chapter I by adding part 104 to read as follows:

PART 104—COUNTER MONEY LAUNDERING REQUIREMENTS

Subpart A—Definitions

Sec.

Subpart B—Anti Money Laundering Programs [Reserved]

Subpart C—Special Due Diligence for Correspondent Accounts and Private Banking Accounts

Subpart D—Law Enforcement Access to Foreign Bank Records

Subpart E—Cooperative Efforts to Deter Money Laundering [Reserved]

Authority: 31 U.S.C. 5318, 5318A; title III, secs 311, 313, 319, 352, Pub. L. 107–56, 115 Stat. 298, 306, 311, 322.

Subpart A—Definitions

§ 104.10 Definitions.

For purposes of subparts C and D of this part:

(a) *Attorney General* means the Attorney General of the United States.

(b) *Correspondent account* means an account established to receive deposits from, make payments on behalf of a foreign bank, or handle other financial transactions related to such bank.

(c) *Covered financial institution* means:

(1) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) and any foreign branch of an insured bank;

(2) A commercial bank or trust company;

(3) A private banker;

(4) An agency or branch of a foreign bank in the United States;

(5) A credit union;

(6) A thrift institution;

(7) A corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and

(8) A broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(d) *Foreign bank.* (1) The term *foreign bank* means any organization that:

(i) Is organized under the laws of a foreign country;

(ii) Engages in the business of banking;

(iii) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations; and

(iv) Receives deposits in the regular course of its business.

(2) For purposes of this definition:

(i) The term *foreign bank* includes a branch of a foreign bank in a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(ii) The term *foreign bank* does not include:

(A) A U.S. agency or branch of a foreign bank;

(B) An insured bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(C) A foreign central bank or foreign monetary authority that functions as a central bank; and

(D) The African Development Bank, Asian Development Bank, Bank for International Settlements, European Bank for Reconstruction and Development, Inter-American Development Bank, International Bank for Reconstruction and Development (the World Bank), International Finance Corporation, International Monetary Fund, North American Development Bank, African Development Bank, International Development Association, Multilateral Investment Guarantee Agency, and similar international financial institutions of which the United States is a member or as otherwise designated by the Secretary.

(e) *Foreign shell bank* means a foreign bank without a physical presence in any country.

(f) *Majority-owned* means a person who is owned 50 percent or more by another person.

(g) *Owner* means any large direct owner, indirect owner, and reportable small direct owner. For purposes of this definition:

(1) *Large direct owner* means a person who:

(i) Owns, controls, or has power to vote 25 percent or more of any class of voting shares or other voting interests of the foreign bank; or

(ii) Controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of the foreign bank.

(2) *Small direct owner* means a person who owns, controls, or has power to vote less than 25 percent of any class of voting shares or other voting interests of the foreign bank.

(3) *Reportable small direct owner.* (i) Subject to paragraph (g)(3)(ii) of this section, the term *reportable small direct owner* means:

(A) Each of two or more small direct owners who in the aggregate own 25 percent or more of any class of voting shares or other voting interests of the foreign bank and are majority-owned by the same person, or by the same chain of majority-owned persons; and

(B) Each of one or more small direct owners who are majority-owned by another small direct owner and in the aggregate all such small direct owners own 25 percent or more of any class of voting shares or other voting interests of the foreign bank.

(ii) In determining who is a reportable small direct owner for purposes of paragraph (g)(3)(i) of this section, a small direct owner who owns or controls less than 5 percent of the voting shares or other voting interests of the foreign bank need not be taken into account.

(4) *Indirect owner.* (i) The term *indirect owner* means:

(A) Any person in the ownership chain of any large direct owner who is not majority-owned by another person.

(B) Any person, including a small direct owner who is a majority-owner as described in paragraph (g)(3)(i)(B) of this section, in the ownership chain of any reportable small direct owner who is not majority-owned by another person.

(ii) A person who is a reportable small direct owner as defined in paragraph (g)(3) of this section need not also be reported as an indirect owner under this paragraph (g)(4).

(5) *Person* means any individual, bank, corporation, partnership, limited liability company, or any other legal entity. For purposes of this definition:

(i) Members of the same family shall be considered to be one person.

(ii) The term *same family* means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, second cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing.

(iii) Each member of the same family who has an ownership interest in a foreign bank must be identified if the family is an owner because of the aggregate ownership interests of the members of the family. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

(6) *Voting shares or other voting interests* means shares or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions).

(h) *Person.* Except with respect to paragraph (g) of this section, the term *person* shall have the same meaning as provided in § 103.11(z) of this chapter.

(i) *Physical presence* means a place of business that:

(1) Is maintained by a foreign bank;

(2) Is located at a fixed address (other than solely an electronic address or a post-office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

(i) Employs 1 or more individuals on a full-time basis; and

(ii) Maintains operating records related to its banking activities; and

(3) Is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.

(j) *Regulated affiliate.* (1) The term *regulated affiliate* means a foreign shell bank that:

(i) Is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(ii) Is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

(2) For purposes of this definition:

(i) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(ii) *Control* means:

(A) Ownership, control, or power to vote 25 percent or more of any class of voting shares or other voting interests of another company; or

(B) Control in any manner the election of a majority of the directors (or individuals exercising similar functions) of another company.

(k) *Secretary* means the Secretary of the Treasury.

Subpart B—Anti Money Laundering Programs [Reserved]

Subpart C—Special Due Diligence for Correspondent Accounts and Private Banking Accounts

§ 104.40 Records concerning owners of foreign banks and agents designated to receive service of legal process; prohibition on correspondent accounts for foreign shell banks.

(a) *Requirements for covered financial institutions*—(1) *Records of owners and agents.* A covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of each such foreign bank and the name and address of a person who resides in the United States and is authorized, and has agreed to be an agent to accept service of legal process for records regarding each such account. For purposes of this section, any correspondent account maintained by a foreign branch of a covered financial institution for a foreign bank shall be deemed to be maintained in the United States.

(2) *Prohibition on correspondent accounts for foreign shell banks.* (i) A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign shell bank.

(ii) A covered financial institution shall take reasonable steps to ensure

that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank.

(iii) Nothing in this paragraph (a)(2) prohibits a covered financial institution from providing a correspondent account or banking services to a regulated affiliate.

(iv) For purposes of this paragraph (a)(2), any correspondent account established, maintained, administered, or managed by a foreign branch of a covered financial institution shall be deemed to be established, maintained, administered, or managed in the United States.

(b) *Safe harbor.* Subject to paragraph (d) of this section, a covered financial institution will be deemed to be in compliance with the requirements of paragraph (a) of this section with respect to a foreign bank if the covered financial institution obtains from the foreign bank the certification described in Appendix A to this part (including all annexes thereto).

(c) *Verification requirements*—(1) *Biennial verification.* At least once every 2 years, a covered financial institution shall verify the information previously provided by each foreign bank for which it maintains a correspondent account, or otherwise relied upon by the covered financial institution for purposes of this section.

(2) *Interim verification.* If at any time a covered financial institution has reason to believe that any information provided by a foreign bank or otherwise relied upon by the covered financial institution for purposes of this section is no longer correct, the covered financial institution shall request that the foreign bank verify such information.

(3) *Safe harbor.* Subject to paragraph (d) of this section, a covered financial institution will be deemed to continue to be in compliance with the requirements of this paragraph (c) and paragraph (a) of this section if the covered financial institution obtains from the foreign bank:

(i) A revised Appendix A certification (including all annexes thereto); or

(ii) The recertification described in Appendix B to this part.

(d) *Closure of correspondent accounts*—(1) *Accounts existing on [the date that is 30 days after the date of publication of the final rule in the **Federal Register**].* In the case of a foreign bank with respect to which a covered financial institution maintains a correspondent account that was in existence on [the date that is 30 days after the date of publication of the final rule in the **Federal Register**], the covered financial institution shall close all correspondent accounts with such foreign bank not later than [the date that is 90 days after the date of publication of the final rule in the **Federal Register**] if the covered financial institution has not obtained, from the foreign bank or otherwise, the information described in Appendix A to this part (including all annexes thereto).

(2) *Accounts established after [the date that is 30 days after the date of publication of the final rule in the **Federal Register**].* In the case of a foreign bank with respect to which a covered financial institution establishes a correspondent account after [the date that is 30 days after the date of publication of the final rule in the **Federal Register**], the covered financial institution shall close such account if the covered financial institution has not obtained, from the foreign bank or otherwise, the information described in Appendix A to this part (including all annexes thereto), or the information described in Appendix B to this part, not later than the date that is:

(i) In the case of an account established before January 1, 2003, 60 calendar days after the date the account is established; or

(ii) In the case of an account established after December 31, 2002, 30 calendar days after the date the account is established.

(3) *Verification of previously provided information.* In the case of a foreign bank from which a covered financial institution requests a verification of information or with respect to which the covered financial institution otherwise undertakes to verify information pursuant to paragraph (c)(1) or (2) of this section, the covered financial institution shall close all correspondent accounts with such foreign bank if the covered financial institution has not obtained, from the foreign bank or otherwise, the information described in Appendix A to this part (including all annexes thereto) or the information described in Appendix B to this part, not later than the date that is:

(i) In the case of a verification initiated before January 1, 2003, 90 calendar days after the date of the request or otherwise undertaking the verification; or

(ii) In the case of a verification initiated after December 31, 2002, 60 calendar days after the date of the request or otherwise undertaking the verification.

(4) *Reestablishment of closed accounts and establishment of new accounts.* A covered financial institution shall not reestablish any account closed pursuant to this paragraph, and shall not establish any other correspondent account with the concerned foreign bank, until it obtains, from the foreign bank or otherwise, the information described in Appendix A to this part (including all annexes thereto) or the information described in Appendix B to this part, as appropriate.

(5) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this paragraph (d).

(e) *Recordkeeping requirement.* A covered financial institution shall retain the original of any document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by the covered financial institution, for purposes of this section, for at least 5 years after the date that the covered financial institution no longer maintains any account for such foreign bank. A covered financial institution shall retain such records with respect to any foreign bank for such longer period as the Secretary may direct.

(f) *Special rules concerning information requested prior to (the date that is 30 days after the date of publication of the final rule in the **Federal Register**)*—(1) *Definition.* For purposes of this paragraph (f) the term ''Interim Guidance'' means:

(i) The Interim Guidance of the Department of the Treasury dated November 20, 2001 [1] and published in the **Federal Register** on November 27, 2001; or

(ii) The provisions of this part as published in the **Federal Register** on December 28, 2001.

(2) *Safe harbors.* (i) For purposes of paragraph (b) of this section, a covered financial institution that requested a foreign bank to provide the information described in the Interim Guidance prior to [the date that is 30 days after the date of publication of the final rule in the **Federal Register**] will be deemed to be in compliance with the requirements of paragraph (a) of this section with respect to such foreign bank if the foreign bank provides such information to the covered financial institution on or before [the date that is 90 days after the date of publication of the final rule in the **Federal Register**].

(ii) Nothing in this section shall be construed to cause any information obtained pursuant to the Interim Guidance to be considered incorrect for

[1] The November 20, 2001 Interim Guidance may be found on the Treasury Internet site at *http://www.treas.gov/press/releases/po813.htm.*

purposes of paragraph (c)(2) of this section if such information was obtained pursuant to a request to a foreign bank made prior to [the date that is 30 days after the date of publication of the final rule in the **Federal Register**] and received on or before [the date that is 90 days after the date of publication of the final rule].

(iii) For purposes of paragraph (d)(1) of this section, the reference in paragraph (d)(1) of this section to ''the information described in Appendix A to this part (including all annexes thereto)'' shall be deemed to refer to such information as described in the Interim Guidance if such information was obtained pursuant to a request to a foreign bank made prior to [the date that is 30 days after the date of publication of the final rule in the **Federal Register**] and received on or before [the date that is 90 days after the date of publication of the final rule].

(3) *Verification of information.* For purposes of paragraph (c)(1) of this section, information obtained pursuant to a request to a foreign bank made prior to [the date that is 30 days after the date of publication of the final rule in the **Federal Register**] and received on or before [the date that is 90 days after the date of publication of the final rule] shall be verified in accordance with the definitions and requirements of this section.

(4) *Recordkeeping requirement.* Paragraph (e) of this section shall apply to any document provided by a foreign bank, or otherwise relied upon by a covered financial institution, for purposes of the Interim Guidance.

§ 104.50 [Reserved]

Subpart D—Law Enforcement Access to Foreign Bank Records

§ 104.60 Summons or subpoena of foreign bank records.

(a) *Issuance to foreign banks.* The Secretary or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(b) *Issuance to covered financial institutions.* Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained by a covered financial institution under § 104.40, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

§ 104.70 Termination of correspondent relationship.

(a) *Termination upon receipt of notice.* A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed:

(1) To comply with a summons or subpoena issued under § 104.60(a); or

(2) To initiate proceedings in a United States court contesting such summons or subpoena.

(b) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with paragraph (a) of this section.

(c) *Failure to terminate relationship.* Failure to terminate a correspondent relationship in accordance with this section shall render the covered financial institution liable for a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated.

Subpart E—Cooperative Efforts To Deter Money Laundering [Reserved]

Appendix A to Part 104—Certification Regarding Correspondent Accounts

BILLING CODE 4810–25–P

CERTIFICATION FOR PURPOSES OF SECTIONS 5318(j) AND 5318(k) OF TITLE 31, UNITED STATES CODE

[OMB Control Number 1505-0184]

The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).

The undersigned financial institution,

_____ (a "Foreign bank" as defined in

31 CFR 104.10(d)), has established one or more accounts with _____

_____ (a "Covered Financial Institution")

to receive deposits from, make payments on behalf of, or handle other financial transactions related to Foreign Bank (the "correspondent accounts"). Foreign Bank hereby certifies, by an individual authorized to make such certification, as follows:

1. Foreign Bank (check appropriate box and complete Annex I):

☐ (a) Maintains a place of business that (i) is located at a fixed address (other than solely an electronic address or a post office box) in a country in which Foreign Bank is authorized by such country to conduct banking activities, at which location Foreign Bank employs one or more individuals on a full-time basis and maintains operating records related to its banking activities; and (ii) is subject to inspection by the banking authority that licensed Foreign Bank to conduct banking activities (hereinafter referred to as a **"physical presence"**);

☐ (b) Does not have a **physical presence** in any country, but the Foreign Bank (i) is an affiliate of a U.S. depository institution, U.S. credit union, or a Foreign bank that maintains a **physical presence** in a country; and (ii) is also subject to supervision by the same banking authority in the country that regulates such affiliated depository institution, credit union, or foreign bank (the Foreign Bank is thus a **"regulated affiliate"**); or

☐ (c) Does not have a **physical presence** in a country and is not a **regulated affiliate.**

2. Foreign Bank does not use any correspondent account with the Covered Financial Institution to indirectly provide banking services to any foreign bank that does not have a **physical presence** in any country, and that is not a **regulated affiliate**.

3. Foreign Bank has no **owner(s)** (as defined below) except as set forth in Annex II. For purposes of this Certification, an **owner** means any **large direct owner**, any **indirect owner**, and any **reportable small direct owner** as these terms are defined 31 CFR 104.10(g). Generally:

A **large direct owner** is a **person** who: (1) owns, controls, or has power to vote 25 percent or more of any class of voting shares or other voting interests of the foreign bank; or (2) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of the foreign bank.

A **small direct owner** is a **person** who owns, controls, or has power to vote less than 25 percent of any class of voting shares or other voting interests of the foreign bank. A small direct owner need not be reported on Annex II unless it is a reportable small direct owner.

A **reportable small direct owner** means: (1) each of two or more small direct owners who in the aggregate own 25 percent or more of any class of voting shares or other voting interests of the foreign bank and are majority-owned by the same indirect owner; or (2) each of any one or more small direct owners who are majority-owned by another small direct owner and in the aggregate all such small direct owners own 25 percent or more of any class of voting shares or other voting interests of the foreign bank. In determining who is a reportable small direct owner, a small direct owner that owns or controls less than 5 percent of the voting shares or other voting interests of the foreign bank need not be taken into account.

An **indirect owner** means: Any person in the ownership chain of any large direct owner or reportable small direct owner who is not majority-owned by another person.
For purposes of this Certification, (i) **"person"** means any individual, bank, corporation, partnership, limited liability company or any other legal entity; (ii) **voting securities or other voting interests** means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions); and (iii) members of the same family* shall be considered one **person**.

4. The individual or entity ("Agent") identified in Annex III, resident in the United States at the address (not a post office box) set forth in Annex III, is authorized to accept service of legal process from the Secretary of the Treasury or the Attorney General of the United States pursuant to Section 5318(k) of title 31, United States Code.

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* The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, second cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account. Each family member with an ownership interest must be reported.

5. Foreign Bank shall notify in writing within 30 calendar days each financial institution in the United States at which it maintains a correspondent account of any change in facts or circumstances as reported in this Certification and the Annexes hereto.

6. Foreign Bank understands that each financial institution in the United States at which it maintains a correspondent account may provide a copy of this Certification to the Secretary of the Treasury and the Attorney General of the United States.

I, _____ (name), certify that I have read and understand this Certification and the Annexes hereto and that the statements made in this Certification and the Annexes hereto are true and correct.

This Certification is made on behalf of _____ (name of Foreign Bank), a banking institution organized under the laws of _____ (specify country).

I understand that the statements contained in this Certification and the Annexes hereto may be transmitted to one or more departments or agencies of the United States of America for purpose of fulfilling such departments and agencies governmental functions.

_____
[Signature]

_____
[Title]

Executed on this _____ day of _____, 200__.

Received, reviewed and accepted by:

Name: _____
Title: _____
For:

_____
[Name of Covered Financial Institution]

_____
Date

Annex I

1. To be completed if Foreign Bank checked paragraph 1(a) of the Certification:

(A) Foreign Bank maintains a place of business at

_____
[Street Address]

in _____ .
[Country]

(B) The banking authority that has the right to inspect the place of business referred to in (A) is

_____ .
[Name of Banking Authority]

2. To be completed if Foreign Bank checked paragraph 1(b) of the Certification:

(A) Foreign Bank's affiliate that is regulated is

_____, which maintains a **physical presence** at
[Name of Affiliate]

_____
[Street Address]

in _____ .
[Country]

(B) The banking authority that supervises both the Foreign Bank and its affiliate is

_____ .
[Name of Banking Authority]

Annex II

Name and Address
of Owner(s)

Name	Address (No Post Office Boxes)

Attach Additional Sheets if Necessary

Annex III

Name and Address
of Agent Designated to Accept Service of Legal Process

Name	**Address** **(No Post Office Boxes)**	**Phone No.**	**Fax No.**	**E-mail** **Address**

FOR PURPOSES OF SECTIONS 5318(j) AND 5318(k) OF TITLE 31, UNITED STATES CODE

[OMB CONTROL NUMBER 1505-_____]

The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).

The undersigned financial institution, _____

_____(a "Foreign Bank"

as defined in 31 CFR 104.10(d)), has established one or more accounts with _____

_____

(a "Covered Financial Institution") to receive deposits from, make payments on behalf of, or handle other financial transactions related to Foreign Bank (the "correspondent accounts").

Foreign Bank hereby certifies, by an individual authorized to make such certification, as follows:

☐ The information contained in the certification to the Covered Financial Institution dated _____ remains true and correct.

☐ The information contained in the certification to the Covered Financial Institution dated _____is revised by the information provided with this certification (attach a statement describing the information that is no longer correct and indicating the correct information).

I, _____ (name), certify that I have read and understand this Certification and that the statements made in this Certification is true and correct.

This Certification is made on behalf of _____

_____ (name of Foreign Bank), a

banking institution organized under the laws of _____.
(Specify Country)

I understand that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for purpose of fulfilling such departments and agencies governmental functions.

_____
[Signature]

_____
[Title]

Executed on this _____ day of _____, 200__.

Received, reviewed and accepted by:

Name: _____
Title: _____
For:

_____
[Name of Covered Financial Institution]

_____
Date

[FR Doc. 01–31849 Filed 12–27–01; 8:45 am]
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CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Illinois; comments due by 12-31-01; published 11-30-01 [FR 01-29656]

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Air quality implementation plans; approval and promulgation; various States:
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LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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H.J. Res. 80/P.L. 107–98

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